

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Kristi F. Curtis, Circuit Court Judge

YUSUF KARIM AQUIL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-002092

APPENDIX

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
 2013-GS-40-591
 2013-GS-40-587-88

3
 4 State of South Carolina,)
 5 Plaintiff,)
 6 vs.) TRANSCRIPT OF RECORD
 7 Yusef Karim Aquil,)
 8 Defendant.)

9 March 16, 2015
 10 Columbia, South Carolina

11
 12 B E F O R E:

13 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
 14
 15
 16

17 A P P E A R A N C E S:

18 RICHARD C.R. CATHCART, ASSISTANT SOLICITOR
 Attorney for the Plaintiff

19 NEAL M. LOURIE, ESQ.
 20 OVERTURE E. WALKER, ESQ.
 Attorneys for the Defendant
 21
 22
 23

24 DEBORAH M. McCURDY, RPR
 Official Court Reporter

25 I N D E X O F W I T N E S S E S

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3 (WHEREUPON, no witnesses were called
4 during these proceedings.)
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9 E X H I B I T S
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12 (WHEREUPON, no exhibits were introduced
13 during these proceedings.)
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25 MARCH 16, 2015

1 MR. CATHCART: Yusef Aquil. He is here to
2 plead guilty to murder, kidnapping, and armed
3 robbery. He is represented by Mr. Lourie and Mr.
4 Walker of the private bar. This is a negotiated
5 plea, Your Honor, for the minimum of 30 years.

6 THE COURT: Is that correct, Mr. Lourie and
7 Mr. Walker?

8 MR. LOURIE: Correct, Your Honor.

9 THE COURT: And the negotiations are?

10 MR. CATHCART: Thirty years to run concurrent
11 with each other, Your Honor.

12 THE COURT: To run concurrent. Is that
13 correct, Mr. Lourie and Mr. Walker?

14 MR. WALKER: Yes.

15 MR. LOURIE: That's correct, Your Honor. Also
16 there is a conspiracy indictment that is being
17 dismissed. And also two direct -- two other
18 indictments are being dismissed as well. I'm going
19 to put those numbers on the record, Your Honor.
20 2015-GS-40-01643, possession of a firearm by a
21 convicted violent felon. And indictment for a
22 pistol, 2015-GS-40-01641. Those are being
23 dismissed. And those are direct presentments. In
24 addition to the conspiracy.

25 THE COURT: Is that correct, Mr. Cathcart?

1 MR. CATHCART: That is correct, Your Honor.
2 Also, Your Honor, this case was being called for
3 trial this week. Pursuant to the Defendant's prior
4 record, which was a armed robbery back from 1995,
5 July 15th, the State did serve him with our
6 intention to seek life without parole. Pursuant to
7 his plea, we are withdrawing that -- our intention
8 to seek life without parole. And also the
9 kidnapping in this case is of a nonsexual nature,
10 so it does not need to be on the registry list. I
11 would ask that you make a finding as to that as
12 well.

13 THE COURT: All right.

14 MR. LOURIE: He needs to be sworn in.

15 THE CLERK: Would you raise your right hand,
16 please?

17 (Defendant complies.)

18 THE CLERK: Do you swear to tell the truth,
19 the whole truth, and nothing but the truth, so help
20 you God?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. And, Mr. Lourie, you
23 are going to do the talking?

24 MR. LOURIE: Yes, I will do the talking.

25 THE COURT: Have you explained to your client

1 the charges contained in the indictment, the
2 possible punishment, and his constitutional rights?

3 MR. LOURIE: I have, Your Honor.

4 THE COURT: And how does he wish to plead?

5 MR. LOURIE: Guilty, Your Honor.

6 THE COURT: And do you agree with his decision
7 to plead guilty?

8 MR. LOURIE: Absolutely, Your Honor.

9 THE COURT: All right. And you are Yusef
10 Aquil?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And, sir, it is my understanding
13 that you wish to plead guilty to one count of
14 kidnapping, Indictment 2013-GS-40-587; one count of
15 murder, 2013-GS-40-591; and one count of armed
16 robbery, 2013-GS-40-588. Is that correct?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: How old are you, sir?

19 THE DEFENDANT: Thirty-six.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: Tenth grade, Your Honor.

22 THE COURT: Are you married?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Do you have children?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And their ages?

2 THE DEFENDANT: Fourteen. I have a son.

3 THE COURT: And, sir, within the last 24
4 hours, have you taken any medication, drugs, or
5 alcohol?

6 THE DEFENDANT: No, Your Honor, I haven't.

7 THE COURT: And is there anything that
8 prevents you from knowing and understanding what
9 you are doing here today?

10 THE DEFENDANT: No, ma'am. No, Your Honor.

11 THE COURT: Sir, are you on probation or
12 parole?

13 THE DEFENDANT: Neither, ma'am.

14 THE COURT: Sir, you have heard the
15 negotiations between the State and your attorneys
16 on behalf of you is that there is a recommendation
17 of a 30-year sentence, that the three indictments
18 run concurrent, and that there be a finding of no
19 sex offender registry on the kidnapping charge. Is
20 that your understanding of the negotiations, sir?

21 THE DEFENDANT: Yes, ma'am, Your Honor.

22 THE COURT: You completely understand that,
23 and is that your negotiation?

24 THE DEFENDANT: Yes, ma'am, Your Honor.

25 THE COURT: All right. Listen closely to the

1 Solicitor as he states the facts.

2 MR. CATHCART: May it please the Court, Your
3 Honor? This incident occurred on September the
4 17th the evening of 2012. The victim is Marion
5 Spencer. He knows the Co-Defendants in this case,
6 Jimmy Dunbar and Tymeka Moore as -- basically
7 Ms. Moore is one of his Clients. The Defendant --
8 excuse me, the victim had a side job selling a
9 little bit of marijuana.

10 And on this night in question, the Defendants,
11 along with this Co-Defendant, conspired with each
12 other to rob the victim. What they did was ask for
13 a little bit more marijuana than she normally gets.
14 The victim didn't normally sell a ton of marijuana.
15 Just asked for a half ounce.

16 So as the victim showed up to the house, these
17 two Defendants, Mr. Aquil and Mr. Dunbar, attacked
18 him. Mr. Dunbar hit him with a pistol. I guess
19 his head. And Ms. Moore provided a rope and tape
20 to tie the victim up with.

21 The attack apparently went stronger than they
22 thought it would be, and they ended up killing
23 Mr. Spencer. They tied him up. He died not only
24 from the blow to his head, but also from
25 asphyxiation from the rope that was around his

1 neck.

2 After he was dead, the Defendants put him in
3 the car -- a car -- the victim's car -- and drove
4 him to Candi Lane, dumped the body there. And
5 Mr. Aquil and Mr. Dunbar together set the body on
6 fire.

7 If I might approach, Your Honor?

8 THE COURT: Yes.

9 MR. CATHCART: I showed Defense counsel the
10 picture.

11 (Provides to Court.)

12 MR. CATHCART: A witness was driving down I-26
13 around midnight and saw the fire from the road,
14 because where they burned it on Candi Lane, it is
15 just right beside I-26.

16 They called the fire department and the
17 police. The fire department arrived and they found
18 that body still there, still smoldering. In fact,
19 because the wind was blowing, the fire would come
20 back on and off as it fanned the gasoline that was
21 there.

22 They were able to full fingerprints from the
23 victim. They were able to identify who he was.
24 And while they were still working on this scene,
25 another fire was reported on East Exchange Street.

1 At this point the Defendants -- not this man, but
2 Mr. Dunbar and Ms. Moore -- took the victim's
3 vehicle and set it on fire as well.

4 While the police were looking at the body on
5 the side of the road, Mr. Spencer's phone -- this
6 would be two hours after the police were already
7 looking at his body -- his phone, for some reason,
8 called her phone for one second. Maybe because it
9 was in a fire, it burned up and shorted at that
10 time. But at that point when the police were
11 looking at their phone records -- his phone
12 records, Mr. Spencer's phone records -- they were
13 able to see that two hours after he was already
14 dead he was phoning Ms. Moore.

15 He will say that he went over to that house
16 and he went to go talk to them. When they went
17 there, they found Mr. Dunbar had a burn on his leg
18 and was armed with a pistol. That pistol was taken
19 from him. He was arrested because he was not
20 supposed to have a pistol because he has a prior
21 record for armed robbery. Ms. Moore knew what they
22 were there for and came to the police station and
23 gave a statement as to what they did, about the
24 prior planning of it, and about her participation
25 and these two men's participation.

1 DNA was found at the scene also, the victim's
2 blood on the porch and on the fence outside of the
3 house. The gun that Mr. Dunbar had on his body
4 also had the victim's blood on it, his DNA. And
5 also his shoes had the DNA.

6 At the scene, footprints were there matching
7 not only Mr. Dunbar's shoes, but also matching a
8 pair of shoes that Mr. Aquil had as well.

9 In preparing for this trial, the State has
10 served both Mr. Aquil and Mr. Dunbar with our
11 intention to seek life without parole. On Thursday
12 Mr. Dunbar came in and gave a statement to us
13 confessing to his participation in the crime,
14 minimizing his involvement, but confessing to what
15 he did and what Mr. Aquil had done as well.

16 On Friday Mr. Aquil also came into our office
17 with his attorneys and gave a complete confession
18 as to his involvement.

19 Again, everybody minimizes somewhat what they
20 have done, but everybody has admitted to their
21 participation not only in the planning of this
22 armed robbery, but in the murder of Mr. Spencer.

23 Mr. Aquil's prior record dates back from 1985.
24 As I stated, he was waived up from juvenile court
25 for armed robbery. And then in 1995 also he has

1 two counts of grand larceny of a motor vehicle.
2 And in 2004 he has four counts of strong armed
3 robbery convictions that were pled down from armed
4 robbery.

5 Because of the Defendant's cooperation, the
6 State has agreed to the minimum sentence in this
7 case. We, as of Friday, a very strong case against
8 the Defendant, and we were looking forward to
9 setting it for trial, but because he has come
10 forward, because he has confessed, and he gave
11 closure to the victim's family as well, the State
12 has agreed to do the minimum sentence.

13 The victim's family is here. They have been
14 present during the entire preparation of this case.
15 I believe Mr. Spencer's brother would like to
16 address the Court.

17 THE COURT: All right. Let me take the plea,
18 and then I will hear from him.

19 All right. Sir, do you agree with the facts
20 as stated by the Solicitor?

21 THE DEFENDANT: Yes, ma'am, Your Honor.

22 THE COURT: And is that what you are pleading
23 guilty to?

24 THE DEFENDANT: Yes, ma'am, Your Honor.

25 THE COURT: Is there any part of that that you

1 disagree with?

2 THE DEFENDANT: No, ma'am, Your Honor.

3 THE COURT: All right. You understand, sir,
4 on the kidnapping charge it carries up to 30 years,
5 the murder charge carries 30 years to life, and the
6 armed robbery carries a minimum of 10 and a maximum
7 of 30 years. I could run those all consecutive and
8 you would be looking at 90 years or even up to a
9 life sentence. Do you understand that, sir?

10 THE DEFENDANT: Yes, ma'am, Your Honor.

11 THE COURT: Knowing that, do you still wish to
12 plead guilty?

13 THE DEFENDANT: Yes, ma'am, Your Honor.

14 THE COURT: All right. And you understand
15 that these are classified as violent, most serious
16 offenses? All three of them are classified as
17 violent, most serious, meaning under our
18 two-strikes law that you, if you were to get
19 another most serious offense, that you could be
20 looking at life without parole? And apparently you
21 already have two other strikes, one other or two
22 other strikes.

23 MR. CATHCART: One other strike, Your Honor.

24 THE COURT: One other strike. Do you
25 understand that, sir?

1 THE DEFENDANT: Yes, ma'am, Your Honor, I do.

2 THE COURT: You understand the classification
3 is violent. Do you understand that?

4 THE DEFENDANT: Yes, ma'am, Your Honor.

5 THE COURT: All right. And you know it is
6 day-for-day? You understand that?

7 THE DEFENDANT: Yes, ma'am, Your Honor.

8 THE COURT: And you know under a violent
9 offense you will be classified for purposes of the
10 Department of Corrections as a violent offender?
11 Do you understand that?

12 THE DEFENDANT: Yes, ma'am, Your Honor.

13 THE COURT: Knowing all of that, do you still
14 wish to plead guilty?

15 THE DEFENDANT: Yes, ma'am, Your Honor.

16 THE COURT: All right. And you understand,
17 sir, when you plead guilty you give up certain
18 important constitutional rights.

19 You have a right to a jury trial. At a jury
20 trial, which the State was prepared, we were all
21 prepared to go forward with today, your attorneys
22 are prepared, they were prepared for this time to
23 allow you to have a jury trial today. At a jury
24 trial the State would have to prove you guilty
25 beyond a reasonable doubt.

1 You and your attorneys would have the
2 opportunity to cross-examine any witnesses that
3 they would present. You would not have to testify,
4 sir. You would not have to present any witnesses.
5 The burden would be upon the State to prove you
6 guilty beyond a reasonable doubt.

7 Sir, if you gave any incriminating statements,
8 you would have the opportunity to challenge the
9 admission of those statements. If there was any
10 issue regarding identification, you would have the
11 opportunity to challenge the admission of any
12 identification evidence. Sir, you would have the
13 opportunity to cross-examine through your attorneys
14 any witnesses that the State would present. And,
15 once again, sir, you would have the right to remain
16 silent. The burden would be upon the State to
17 prove you guilty beyond a reasonable doubt.

18 But by pleading guilty you waive your right to
19 a jury trial and give up those other important
20 constitutional rights. Is that what you wish to
21 do?

22 THE DEFENDANT: Yes, ma'am, Your Honor.

23 THE COURT: All right. And, sir, you have
24 been represented by Mr. Lourie and Mr. Walker. Are
25 you satisfied with their representation?

1 THE DEFENDANT: Yes, ma'am, Your Honor.

2 THE COURT: And have you spent as much time as
3 necessary with them for them to properly represent
4 you?

5 THE DEFENDANT: Yes, ma'am, Your Honor.

6 THE COURT: And have they done everything you
7 feel they could have done or should have done?

8 THE DEFENDANT: Yes, ma'am, Your Honor.

9 THE COURT: And are you completely satisfied
10 with their services?

11 THE DEFENDANT: Yes, ma'am, Your Honor.

12 THE COURT: Do you need any additional time to
13 speak with them today?

14 THE DEFENDANT: No, ma'am, Your Honor.

15 THE COURT: All right. And, sir, is anyone
16 forcing you to plead guilty today?

17 THE DEFENDANT: No, ma'am, Your Honor.

18 THE COURT: And are you pleading guilty freely
19 and voluntarily?

20 THE DEFENDANT: Yes, ma'am, Your Honor.

21 THE COURT: And are you -- has anyone offered
22 you anything in exchange for your plea today? I
23 understand the State and you and your attorneys
24 have worked out a negotiation of 30 years, but has
25 anyone offered you anything other than that in

1 exchange for your plea today?

2 THE DEFENDANT: No, ma'am, Your Honor.

3 THE COURT: Has anyone threatened you?

4 THE DEFENDANT: No, ma'am, Your Honor.

5 THE COURT: Has anyone coerced you?

6 THE DEFENDANT: No, ma'am, Your Honor.

7 THE COURT: All right. Is your plea, once
8 again, free and voluntary?

9 THE DEFENDANT: Yes, ma'am, Your Honor.

10 THE COURT: And have you understood all of my
11 questions?

12 THE DEFENDANT: Yes, ma'am, Your Honor.

13 THE COURT: Have you answered them truthfully?

14 THE DEFENDANT: Yes, ma'am, Your Honor.

15 THE COURT: And the answers that you have
16 given me today, sir, have been your answers? I
17 understand your lawyers have gone over with you --
18 I'm sure they have gone over with you the questions
19 that I'm going to ask, but the answers that you
20 have given today have been your answers; is that
21 correct?

22 THE DEFENDANT: Yes, ma'am, Your Honor.

23 THE COURT: All right. And, sir, you
24 understand you have the right to appeal the guilty
25 plea and sentence of this Court within ten days of

1 today's date? Do you understand that?

2 THE DEFENDANT: Yes, ma'am, Your Honor.

3 THE COURT: If you cannot afford an attorney
4 for that plea, you will have -- if you could not
5 afford an attorney, the Court would appoint an
6 attorney for you for purposes of appeal also. Do
7 you understand that, sir?

8 THE DEFENDANT: Yes, ma'am, Your Honor.

9 THE COURT: All right. Knowing all of that,
10 sir, do you wish for me to accept your plea of
11 guilty to the charge of kidnapping, murder, and
12 armed robbery; is that correct?

13 THE DEFENDANT: Yes, ma'am, Your Honor.

14 THE COURT: All right. I find that there is a
15 substantial factual basis for the plea. I also
16 find that the Defendant's decision to plead guilty
17 is freely, voluntarily, knowingly, and
18 intelligently made. That he is represented by
19 counsel to whom he has indicated to me he is
20 completely satisfied with.

21 I will accept your plea.

22 And you gave me his priors?

23 MR. CATHCART: I did, Your Honor. But I want
24 to make sure I did not neglect to say where this
25 occurred. The address was I believe [REDACTED] Ramona

1 Street here in Richland County. We were able to
2 track the Defendant's phone from his home all the
3 way to that location here in Richland County where
4 the murder occurred. And the body was dumped on
5 Candi Lane here in Richland County. And the truck
6 was also on Exchange Street, here also in Richland
7 County.

8 THE COURT: All right.

9 MR. CATHCART: And I believe the victims would
10 like to address the Court.

11 THE COURT: Y'all can step aside.

12 MR. CATHCART: Stand up and just state your
13 name out loud so we can hear.

14 MR. SPENCER: Leroy Spencer. Brother.

15 THE COURT: All right.

16 MR. SPENCER: Honorable Judge. The actions of
17 the Defendant and Co-Defendant have caused an
18 irreparable harm to our deceased -- this is from my
19 mother, brother, uncle, and friend. The actions of
20 the Defendant and Co-Defendants were malicious,
21 premeditated, deliberate, and unequivocally evil.
22 People like the Defendant should not be permitted
23 to return to their families because Marion Spencer
24 will never return to his.

25 My son's death impacts several generational

1 levels in our family. His sisters, brothers, and I
2 will forever miss him. And because we were unable
3 to see him at rest one last time, we struggle with
4 finding closure. My children, Marion's siblings,
5 have forever lost their beloved friend, confidante,
6 and brother. My grandchildren, Marion's nieces and
7 nephews, were shaken by this heinous crime. Marion
8 had no biological children, so he treated each of
9 his nieces and nephews like his own. These
10 generations of people love Marion so much that it
11 pains us to think of the day that his life was
12 taken. As his mother, I can hardly think of my
13 brother -- my son's final minutes. Did he call for
14 me? Did he weep for us? Did he beg and plead for
15 his life? It hurts so much that we -- we weren't
16 there to save him from his attackers. I hope that
17 the sentence of this crime is a sentence to the
18 maximum extent of the law. It is our hope that the
19 extent is 50 years because Marion was only 50 years
20 old when he was murdered. We ask that you insure
21 that they spend their lives confined in a jail
22 cell, isolated to think of what they did to my
23 son's life, denied the right to walk freely among
24 the rest of us, and, four, deny their ability to
25 gather with their family for 50 years. Why? My

1 son is confined to a casket. My son will never
2 walk among us ever again and he will never enjoy
3 another family gathering. He was only 50 when his
4 life was taken.

5 Thank you, Your Honor.

6 THE COURT: Thank you. And I'd like to say to
7 the family that I am sorry for your loss. And I
8 appreciate you all being here today. I understand
9 that it is tough for you to be here. I am truly
10 sorry for your loss.

11 MR. SPENCER: Thank you.

12 THE COURT: Anything else from the State?

13 MR. CATHCART: No, ma'am.

14 THE COURT: All right. Yes, sir, Mr. Lourie?

15 MR. LOURIE: Thank you, Your Honor. May it
16 please the Court?

17 Judge, this is a sad case. My client is very
18 sorry. As you can see, he is crying up here. He
19 does have true remorse for this. Nothing excuses
20 what he did that day. But I do want Your Honor to
21 know a little bit about him.

22 As you know, he is 36. His father is here,
23 Mr. Karim Aquil. He finished 10th grade at CA
24 Johnson. He was working at the time this happened.
25 He had a house at the time this happened. He had a

1 car at the time this happened. And he let others
2 get him involved in this crime. He was not the
3 mastermind. The State would agree with us on that.
4 He didn't even know the victim. But he made one
5 decision that changed his life, the victim's life,
6 the victim's family's life, and the Co-Defendant's
7 life forever.

8 He did not hit the victim with the gun. It
9 does not excuse his conduct, but he was not the one
10 striking the victim. The evidence would have shown
11 that at the trial. But I explained to him under
12 our law in South Carolina, the hand of one/hand of
13 all and the felony murder rule that our law would
14 hold him just as responsible as if he was holding
15 the gun. He understood that. His family
16 understands that. And understand that he will be
17 held accountable as well.

18 Judge, I would hope based on that information
19 that you would go along with the State in giving
20 our client the minimum sentence of 30 years.

21 That's all I have. And we would ask for
22 credit for time served as well. He has been in
23 since September 21st, 2012.

24 And I think Mr. Aquil does -- this Mr. Aquil,
25 my client, wants to address the Court.

1 THE COURT: I will be glad to hear from him.

2 MR. LOURIE: He does -- he would like to say
3 something to the family. I don't know if you want
4 him to address it to you, or if he can turn around.
5 Whatever they want.

6 THE COURT: He can address me.

7 MR. LOURIE: Okay.

8 THE COURT: The deputies don't usually allow
9 him to turn around.

10 MR. LOURIE: That's okay.

11 THE COURT: But they understand that he wants
12 to look at them.

13 MR. LOURIE: Okay.

14 THE DEFENDANT: Well, Your Honor, as my
15 attorney said, I'm deeply sorry. I regret the
16 decision I made calling them my so-called friends.
17 They wasn't my friends. I'm just so sorry. I'm so
18 sorry to the family. I know I was wrong for trying
19 to help them. I'm so sorry.

20 MR. LOURIE: Thank you, Your Honor.

21 THE DEFENDANT: I'm so sorry. I know you have
22 a serious loss. And I know there is nothing I can
23 say to bring your son back or to change what I have
24 done, the part I played in his death, but I want
25 y'all to know, I am truly sorry. I regret every

1 day since I been incarcerated, every day I pray for
2 the deceased's family. I want to let you know I am
3 truly sorry. Anything I can do, pray, I will. I'm
4 sorry for the death of your son, your brother,
5 because he was somebody's brother, son, and father,
6 grandchild, uncle. And I'm so sorry. I'm so
7 sorry.

8 THE COURT: Thank you.

9 MR. LOURIE: Thank you, Your Honor.

10 THE COURT: All right. Thank you. Anything
11 further from the State?

12 MR. CATHCART: No, ma'am.

13 THE COURT: On Indictment 2013-GS-40-587, 588,
14 and 591, sir, you will be sentenced to the State
15 Department of Corrections for 30 years. The
16 sentences will run concurrent. You will be given
17 credit for the 906 days that you have already
18 served.

19 On Indictment 2013-GS-40-567, I will find
20 there is no sex offender registry as to the
21 kidnapping indictment.

22 All right. Thank you. Thank you all. Good
23 luck to you, sir. Good luck to you all. Thank
24 you.

25 (WHEREUPON, the proceedings were concluded.)

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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 16th day of March, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 10, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

YUSUF KARIM AQUIL, # 226843,
Applicant,

-vs-

State of South Carolina,
Respondent.IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2016 CP 40-1661

APPLICATION FOR
POST-CONVICTION RELIEFJEANETTE W. MCBRIDE
C.C.P. & G.S.

2016 MAR 15 PM 2:02

RICHLAND COUNTY
FILED

1. Place of detention: Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010.
2. Name and location of Court which imposed sentence: Richland County General Sessions, 1701 Main Street, Columbia, SC 29201
3. Name(s) of co-defendant(s)(if any): Jimmy Dunbar, Jr., and Tymeka Moore
4. The indictment number of numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS4000591-Murder
 - (b) 2013GS4000587-Kidnapping
 - (c) 2013GS40000588-Armed Robbery
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 16, 2015-30 years concurrent to others
 - (b) March 16, 2015-30 years concurrent to others
 - (c) March 16, 2015-30 years concurrent to others
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty X
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered yes to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - (b) the result in each such Court to which you appealed:

- i. _____
- (c) the date of each such result:
- i. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
9. If you answered no to (7), state your reasons for not so appealing:
- (a) not advised by counsel
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Violation of the Sixth Amendment right to effective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to properly prepare Applicant for trial
- (b) Failure to properly investigate and prepare for trial leading to plea
- (c) Failure to properly advise Applicant on lesser included offenses
- (d) Failure to include Applicant in negotiations and provide discovery
- (e) Failure to advise Applicant of all information leading to an involuntary plea
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in a State of Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United State Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered yes to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- (b) the name and location of the Court in which each was filed:
- (c) the disposition thereof:
- (d) the date of each such disposition:

- i. if known, citations of any written opinions or orders entered pursuant to each such disposition:
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
 (a) which grounds have been presented:
 (b) the proceedings in which each ground was raised:
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 (a) PCR is the proper forum
17. Were you represented by an attorney at any time during the course of:
 (a) your arraignment and plea? yes
 (b) your trial, if any? n/a
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
n/a
 (e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? yes
18. If you answered Yes to one or more parts of (17), list:
 (a) the name and address of each attorney who represented you:
 i. Neal Lourie, Lourie Law Firm, LLC 1450 Harden Street Extension, P.O. Box 12089 Columbia, SC 29211
 (b) the proceedings at which each such attorney represented you:
 i. plea and sentencing
19. State clearly the relief you seek in filing this application:
vacate plea and sentencing and remand to general sessions court for trial
20. Are you now under sentence from any other court that you have not challenged?
No

Respectfully Submitted,
 A.J.Z. Law Firm, LLC



Aimee J. Zimroczek, Esq. #77193
2003 Lincoln Street
P.O. Box 11961
Columbia, South Carolina 29211
(803) 400-1918 (telephone)
(803) 403-8005 (fax)
ajzlawfirm@gmail.com
Attorney for Applicant

Verification to be added

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Yusuf Karim Aquil, #226843,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

2016-CP-40-1661

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on March 15, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County.¹ Applicant was indicted at the January 2013 term of the Grand Jury for Richland County for one count of murder (2013-GS-40-0591), one count of kidnapping (2013-GS-40-0587), and one count of armed robbery (2013-GS-40-0588). Applicant also had three other indictments: one count of conspiracy, one count of possession of a firearm by a convicted violent felon (2015-GS-40-1643), and another relating to a pistol (2015-GS-40-1641), but these three indictments were dismissed pursuant to a negotiated plea. Applicant was represented by Neal Michael Lourie, Esquire. Assistant Solicitor Richard C.R. Cathcart prosecuted the case. On March 16, 2015, Applicant, pursuant to plea negotiations, pled guilty as indicted to murder, kidnapping, and armed robbery before the Honorable DeAndrea G. Benjamin. He received a negotiated sentence of thirty years imprisonment for each charge to be served concurrently. He did not appeal his convictions or sentences.

¹ Applicant's post-conviction relief application header denotes "Barnwell County," but the application has been properly filed in Richland County.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to properly prepare Applicant for trial."
 - b. "Failure to properly investigate and prepare for trial leading to plea."
 - c. "Failure to properly advise Applicant on lesser included offenses."
 - d. "Failure to include Applicant in negotiations and provide discovery."
 - e. "Failure to advise Applicant of all information leading to an involuntary plea."

III.

Applicant's PCR application claims ineffective assistance of counsel. Respondent contends that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant’s alleges

specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV.

Respondent further submits Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Deputy Attorney General

JESSICA KINARD
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

 _____, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2016-CP-40-01661
	)	
YUSUF KARIM AQUIL, #226843,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC
P.O. Box 11961
Columbia, SC 29211

DATED this the 11th day of July, 2017.


 Felicia V. Hayes, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
2016-CP-40-1661

YUSUF KARIM AQUIL)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

FEBRUARY 20, 2019
COLUMBIA, SOUTH CAROLINA

BEFORE THE HONORABLE KRISTI CURTIS

APPEARANCES:

LINDSEY A. MCCALLISTER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

AIMEE ZMROCZEK, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

ALL FEES PURSUANT TO RULE 607 (h)(i), SCACR
COPIES AVAILABLE UPON REQUEST FROM COURT REPORTER

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
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Yusuf Karim Aquil

By Ms. Zmroczek	6			
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By Ms. McCallister		21		
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By Ms. Zmroczek			37	
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By The Court	38			
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Neal Michael Lourie

By Ms. McCallister	40			
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By Ms. Zmroczek		56		
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By Ms. McCallister			61	
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E X H I B I T S

<u>No.</u>	<u>DESCRIPTION:</u>	<u>ID.</u>	<u>EV.</u>
S-1	Criminal plea document - 3/16/15 - signed by Mr. Aquil		37

1 THE COURT - Yes, ma'am.

2 MS. MCCALLISTER - May it please the Court, Your
3 Honor. This is Yusuf Karim Aquil vs. The State of South
4 Carolina, 2016-CP-40-1661. Your Honor, Mr. Aquil was
5 indicted in January of 2013 for one count of murder, one
6 count of kidnapping, one count of armed robbery.
7 Additionally, he had one count of conspiracy, one count of
8 possession of a firearm by a convicted felon and another
9 count relating to unlawful carrying of a pistol. He was
10 represented on these charges by Neal Michael Lourie.
11 Assistant Solicitor Richard Cathcart prosecuted the case.
12 On March 16th, 2015 he pleaded guilty as indicted to
13 murder, kidnapping and armed robbery before Judge Benjamin.
14 The other three indictments for conspiracy and the weapons
15 charges were dismissed as a part of that plea. He received
16 a negotiated sentence of 30 years on each charge to be
17 served concurrently. He did not appeal his convictions or
18 sentences. He filed this application for relief on March
19 15th, 2016. He is represented by Ms. Aimee Zmroczek. Both
20 Ms. Zmroczek and Mr. Aquil are present in the courtroom
21 today. As far as I know, no amendments to the application
22 have been filed. I believe there are five allegations that
23 are going forward today regarding ineffective assistance of
24 counsel and involuntary guilty plea, that trial counsel
25 failed to properly prepare Mr. Aquil for a trial, that

1 trial counsel failed to properly investigate and prepare
2 for trial which led to a plea, failure -- Mr. -- trial
3 counsel failed to properly advise Mr. Aquil on lesser
4 included offenses, that he failed to include Mr. Aquil in
5 negotiations and provide discovery, and that he failed to
6 advise Mr. Aquil of all necessary information leading to an
7 involuntary guilty plea. If I'm incorrect or there are any
8 other allegations, I would ask Ms. Zmroczek to state them
9 at this time.

10 MS. ZMROCZEK - No, and, Your Honor, just
11 encompassing the last one, because it was kind of broad, it
12 was more narrow -- the kind of the narrow scope that we
13 will be focusing in on doubles the motions, some pretrial
14 motions that had been filed and not addressed, some motions
15 to dismiss.

16 THE COURT - Okay.

17 MS. ZMROCZEK - And, Your Honor, at this time may
18 I call Mr. Aquil to the stand?

19 THE COURT - (Indicating yes)

20 YUSUF KARIM AQUIL, AFTER BEING FIRST DULY SWORN,
21 TESTIFIES AS FOLLOWS -

22 DEPUTY CLERK - Thank you. Please have a seat in
23 the witness stand and state your full name for the record.

24 MR. AQUIL - How you doing? My name's Yusuf Karim
25 Aquil.

1 DIRECT EXAMINATION

2 BY MS. ZMROCZEK -

3 Q Mr. Aquil, how old are you?

4 A 40.

5 Q You're 40 now.

6 A Yes, ma'am.

7 Q Do you recall when you -- where are you residing now?

8 A Well, I reside at Lee County Correctional Institution.

9 Q Okay. Do you recall being arrested in 2013 for this -
10 - excuse me -- 2012 for this offense?

11 A Yes, ma'am.

12 Q Okay. When you were arrested in 2012, had you been
13 arrested before that?

14 A Yes, ma'am.

15 Q Okay, what -- and did you have a criminal record?

16 A Yes, ma'am.

17 Q And what was your criminal record?

18 A My criminal record was strong armed robbery. I had
19 five counts of strong armed robbery.

20 Q Okay. And did you plead or go to trial on those?

21 A Uh, I believe I pleaded to a lesser included offense.

22 Q Okay. So you pled to a lesser included offense.

23 A Yes, ma'am.

24 Q Okay, and then in 2012, I believe September 21st, 2012
25 you were arrested. Right?

1 A Yes, ma'am.

2 Q And did you receive a bond?

3 A No, ma'am.

4 Q Okay. So how long were you in jail for the duration
5 of your case?

6 A About -- um, close to three years.

7 Q Three years pretrial ---

8 A In the county?

9 Q Yes.

10 A Close to three years.

11 Q Okay. So once you got arrested on September 21st you
12 never had bond or ---

13 A No, ma'am.

14 Q Okay. So the next thing -- were you -- did you --
15 were you appointed counsel?

16 A Yes, ma'am.

17 Q Okay. And who was that?

18 A Neal Lourie.

19 Q Okay. And did -- how many times did you meet with Mr.
20 Lourie?

21 A I met Mr. Lourie, approximately, about four -- about
22 four to five times.

23 Q Four to five times?

24 A Yes, ma'am.

1 Q And -- we're talking about within the three year
2 period?

3 A Yes, ma'am.

4 Q Okay. And how many hearings did you attend?

5 A Hearings? Just one I believe.

6 Q Okay. When you met with -- did you have any other
7 lawyers that were on your case?

8 A No, ma'am.

9 Q Was there ever an additional lawyer appointed ---

10 A Oh, yes, uh -- Overture -- Overture Walker.

11 Q Okay.

12 A I believe Overture Walker. He got appointed to our
13 case later.

14 Q Okay.

15 A He wasn't -- he wasn't there at the beginning.

16 Q Okay. And was that just to assist in the trial?

17 A Yes, ma'am.

18 Q So this case was going to trial?

19 A Yes, ma'am.

20 Q And you -- we've heard that -- that -- of the charges
21 that you were charged with and, ultimately, pled to murder
22 and kidnapping and armed robbery. Did you discuss with
23 your attorney, Mr. Lourie, did you discuss the facts of the
24 case with him?

25 A Yes, ma'am.

1 Q Okay. Did you give him your defenses?

2 A Yes, ma'am.

3 Q Did you ask him to look into things for you?

4 A Yes, ma'am.

5 Q Okay. What -- so what we're here today for is to talk
6 about what led up to you pleading which you assert was
7 involuntary. Right?

8 A Yes, ma'am.

9 Q So what are things that you asked him to do to get
10 ready for trial that weren't done?

11 A Like -- it's quite a while ago. I've been through a
12 lot since I've been in that jail, so please bear with me.
13 Like I -- I know I asked them to check out the place where
14 Jimmy stayed. You know, I asked them to look at where
15 Jimmy stayed at, you know, ---

16 Q And who is that?

17 A This supposed to -- my co-defendant.

18 Q Okay.

19 A My co-defendant. Tell him to check out where he
20 stayed from the house and the gate (sic), because I was
21 told there was a witness. Told -- I was told that it was a
22 witness from across the street. The people across the
23 street supposedly said it was two people. And I know I
24 asked him about a cell phone, asked him about the cell
25 phone in house, that they -- where they went in my house,

1 they came in my house and got a cell phone without no
2 searching warrant. Um, what else, uh -- it's few other
3 things, but I can't quite remember right now. Sorry.

4 Q Okay. Well, I want you to try to remember, because --
5 -

6 A Yes, ma'am.

7 Q And I know that they woke you up super early this
8 morning, so --- but -- so but one of the things that you
9 had asked him to do was to help investigate. What was your
10 defense in this case?

11 A My defense in this case saying that I -- I never
12 committed the murder, um, that, uh, basically, that it was
13 just at the fact I was -- I was at the wrong place at the
14 wrong time.

15 Q And when you say wrong place at the wrong time,
16 meaning you were merely present?

17 A Yes, ma'am.

18 Q Okay.

19 A I was there.

20 Q And did y'all talk about mere presence as a defense?

21 A Um, -- I believe so. I believe so.

22 Q And you said that -- and when we -- you know, when you
23 filled out your application, you said that you felt like
24 your attorney failed to properly prepare for trial, and we

1 talked about some of the things that he didn't investigate.

2 When you -- did you have a trial date?

3 A I was supposed to go to -- that was like -- when we --
4 when we was to go to trial, we supposed to go to trial like
5 the next week or two days, a few days before I go to trial,
6 and then they came and snatched me up and brought me here.

7 Q They brought you here.

8 A Yes, ma'am.

9 Q Okay, and then what happened?

10 A Uh, Mr. -- Mr. Lourie told me, he said, uh, -- he said
11 your boy Jimmy says -- they say he implicated you and all
12 this and I said, okay, what different (sic) -- saying he
13 was implicating me the whole time anyway.

14 Q So you had two co-defendants, a male and a female.
15 Right?

16 A Yes, ma'am.

17 Q Okay, and so when they brought you right before you
18 were supposed to go to trial, they were confronting you
19 with the fact that your co-defendant was now implicating
20 you?

21 A Yeah, yes, ma'am.

22 Q Okay. But it was your understanding that he had
23 implicated you the whole time?

24 A That's -- he implicated me the whole time.

1 Q Okay. What -- what discovery materials -- what
2 evidence did you have prior to pleading?

3 A What evidence I had?

4 Q Yes.

5 A Uh, like the DNA, the DNA, the guns, uh ---

6 Q I mean what -- what did you have to look at? Like did
7 -- you talked about that one of the things that they didn't
8 do is provide you with discovery, and I'm not talking
9 after; I'm talking before you pled.

10 A Okay.

11 Q Did you have access to all that information?

12 A No, ma'am.

13 Q Okay. So, what did -- how did you know what evidence
14 they had against you? Did you see it, or did y'all talk
15 about it?

16 A Well, we -- he -- he brought it up once, he brought up
17 once saying, uh, what they -- he said, um -- was it him or
18 Mr. Walker? One of them said -- said a few things about,
19 uh, well, they got -- they don't have much on you, because
20 said he could win the trial. He told me he could beat it.

21 Q Okay.

22 A He say because the evidence they got, it's nothing
23 pointing at you.

1 Q And then so how did that change after -- or, well,
2 before we get there. So you had said that you were there
3 three years and that you had come for a hearing.

4 A (Indicating yes)

5 Q Do you recall being denied for bond?

6 A Yes, ma'am.

7 Q And did you and Mr. Lourie -- did he discuss filing
8 some motions on your behalf?

9 A Yes, he did.

10 Q Okay. And did he file that speedy trial motion?

11 A I'm not sure.

12 Q Okay.

13 A I don't know.

14 Q But as far as you were aware, for the three years you
15 were -- had been planning on going to trial.

16 A Yes, ma'am.

17 Q And then how did that change?

18 A It changed -- just before -- like I said before --
19 just before the last few days before going to trial, they
20 snatched me up out of lockup -- I was in lockup, because I
21 was separated from everybody -- they brought me here and we
22 talked in some back room back there -- he told me like, uh,
23 I don't think I'm going to be winning for you the trial, I
24 need to you go ahead and plea. He said best to go ahead
25 and plead, because, uh, I don't think I'm going to be able

1 to win the trial, what you mean, and I was like none of the
2 evidence pointing at me, why should I plea, I sat in the
3 county for three years, close to three years, and I -- you
4 know, all of a sudden you fixing to go to trial in a few
5 days, now you wanting to plea, and that's how that came
6 about.

7 Q Okay. And so what -- so why did you then go ahead and
8 plea at that time?

9 A Did I -- if my lawyer not saying -- if he can't -- if
10 my lawyer saying he can't beat it, why should I go to trial
11 and, you know, and just give -- give the rest of my life
12 away?

13 Q Okay.

14 A You know, I -- it's not like I just met Mr. Lourie. I
15 knew Mr. Lourie before -- even before this charge ever came
16 about. You know, he was, uh -- he was my lawyer for
17 something else, and I trusted him. He told me to plea.

18 Q Okay. And you and I talked about what the
19 implications were, what this Judge could do as far as
20 finding your plea voluntary or not voluntary. It's your
21 understanding that the only thing she can do is if she
22 finds the plea involuntary is that this would go back and
23 you would be facing all these charges again?

24 A Yes, ma'am.

1 Q Okay. And when you pled, when you stood in front of
2 the Judge and he asked you -- you remember he put you under
3 oath and asked you all those questions?

4 A Yes, ma'am.

5 Q Okay. Why did you answer in the affirmative?

6 A My lawyer.

7 Q What do you mean your lawyer?

8 A My lawyer -- he -- well, he told me he -- when he was
9 in the back room he told me, he said she going to ask you
10 this questions, only thing you say yes, ma'am, yes, ma'am,
11 yes ma'am, as you answer, yes, ma'am. And I was like yes,
12 sir, you know, uh -- we got to the point, uh, came up in
13 the front of the Judge I went ahead and agreed to
14 everything that she said.

15 Q Okay. What was your understanding if you didn't agree
16 to everything?

17 A I would've got life without parole.

18 Q Okay. Had you been served a life without parole then?

19 A Yes, we signed some papers.

20 Q Okay. And so -- and you said that you were relying on
21 your lawyer and you just didn't feel -- well, he told you
22 that -- that -- or did he tell you or were you not
23 comfortable with -- did you think he was prepared for
24 trial?

25 A No, ma'am.

1 Q Okay. And you said that you were supposed to go to
2 trial the next couple of days. Right?

3 A Yes, ma'am.

4 Q What -- how many meetings did y'all have like
5 immediately prior to that?

6 A Uh, one.

7 Q That was the one where they brought you up here?

8 A Yes, ma'am.

9 Q Okay. So had you like given him witnesses? Had you -
10 --

11 A Uh, we had -- yeah, we had -- we had -- we had
12 witnesses. We had witnesses. Um, I'm trying to think who
13 it was, because I know I got sent down by Jimmy -- not
14 Jimmy -- um, Chris, Christopher -- oh, what Christopher's
15 last name? -- he used to be my next-door neighbor. He the
16 one who took -- dropped me off. He the one who gave me the
17 ride and dropped me off there.

18 Q To the location?

19 A Yeah, to the location.

20 Q And so you were having -- so he was going to testify
21 that you weren't there ---

22 A I wasn't present, yeah, I wasn't present.

23 Q Okay.

24 A Um, -- um ---

1 Q And were -- and I guess -- let me ask the question a
2 little differently. Were you aware that they had been
3 subpoenaed for your trial?

4 A No.

5 Q Okay. That -- and I guess that was my question.

6 A No.

7 Q So you had witnesses, but to your knowledge, nobody
8 was prepared to go to trial in the next couple of days.

9 A No, ma'am.

10 Q Okay. And -- we, um -- when -- were you aware that
11 there were lesser included offenses? Obviously -- you said
12 before you pled to lesser included offenses in your first -
13 --

14 A I wasn't aware there was lesser included offenses in
15 this here, no, ma'am.

16 Q Okay. Okay. Did you ever have that discussion with
17 your attorneys?

18 A I asked him. I asked him, uh, what -- I told him,
19 because I never denied that I wasn't there. I never denied
20 that. Never denied that I wasn't there in the process of -
21 - because I asked him -- I -- I think I did say something
22 about, um, after the fact, you know, what I'm asking,
23 because ---

24 Q Accessory after the fact? Okay.

1 A --- accessory after the fact -- I said can you get --
2 I said, well, because I was -- I'm not saying that I
3 participated. I said can I get accessory after the fact,
4 something like that.

5 Q Okay.

6 A We discussed that.

7 Q And do you recall when you had that discussion?

8 A Um, the first time -- we -- I just said I'm running
9 (sic) up twice. The first time I was -- we was in -- I
10 think I was in hotel. I was at hotel doing in the county
11 and we ---

12 Q When you said hotel, you're talking about the dorm in
13 the county.

14 A The dorm, yes, ma'am.

15 Q Okay. Sorry. Okay.

16 A I'm sorry.

17 Q Sometimes when people say hotel and they're not
18 familiar with the jail, ---

19 A Oh, okay.

20 Q --- they -- how they're -- yeah.

21 A It's the name of the dorm. Sorry. It's the name of
22 the dorm in the county. It's called hotel. I was -- we
23 was discussing the client rule, the client -- uh, whatever,
24 the lawyer/client privilege.

25 Q Okay.

1 A We discussed that and the second time was here.

2 Q Okay. And what -- what, if anything else, led you to
3 take this plea -- this -- it's your assertion that the plea
4 was done involuntary. Right?

5 A Yes, ma'am.

6 Q And so we need to make sure that we get all of the
7 reasons that you feel like that the plea was involuntary
8 out there, so in addition to not being prepared and having
9 your witnesses not ready and you not knowing all of the
10 facts or what the evidence was, what are the -- what are
11 some of the reasons that -- or what are -- like this is our
12 time to put all the reasons out that you felt like your
13 plea was involuntary.

14 A Okay. Well, basically, -- the main reason is why I
15 was -- I was going off Mr. Lourie's -- Mr. Lourie, because
16 -- I'm trying to think of -- it was assistant he had also,
17 a female -- I can't remember her name -- she was a sweet
18 lady -- they went on and told me -- well, Mr. Lourie told
19 me that he couldn't do -- he said I don't think I can win
20 this trial. Said I don't think, you know, -- win this
21 trial. I said, well, happened to all this -- all this
22 information that we were discussing before, you was telling
23 me that you could beat this, every -- all the evidence, the
24 evidence pointing against me, you know, it was nothing

1 pointing against me, only thing was circumstances saying
2 that my cell phone saying I was in the area, ---

3 Q Okay.

4 A --- you know, and I was like, uh, it's nothing
5 physical against me. Everything they had was DNA -- they
6 had DNA against him and his girlfriend. My second co-
7 defendant -- it was two -- they was boyfriend and
8 girlfriend, and everything was pointing towards them. It
9 was at their house. They had blood in their house, blood
10 on their shoes. Their blood was in -- their blood with the
11 victim blood was tested all -- mines was excluded. They
12 had hair, fingerprints, all that, shoe prints, all that was
13 from them, nothing from me. The only thing they said, that
14 -- all the evidence was a he say, she say.

15 Q Okay.

16 A And I felt that I could win the trial, and I told Mr.
17 Lourie the same thing. I said, you know, we can win this.
18 He say, yeah, but til two, three days at -- to trial time
19 he came and got me and said, uh, I don't think I can win
20 this. I say, how is that possible? And, you know, he just
21 kept -- and Mr. Overture Walker said the same thing. He
22 like, I'm with Neal, whatever Neal say, I'm following up
23 Neal, and I was just devastated. I was like, well, what
24 you think I should do, I think you plea. I said plea to
25 this, say I -- I said why should I plea, you know, I ain't

1 -- I didn't do anything. He said it' the only way you
2 gonna off this easy. If you don't do this, you gonna get a
3 life, so I pleaded.

4 Q Okay. So you felt like it was the choice of a life
5 sentence or ---

6 A The choice -- yes.

7 MS. ZMROCZEK - Okay. All right, please answer
8 any questions of the AG.

9 MR. AQUIL - Yes, sir. (sic)

10 CROSS EXAMINATION

11 BY MS. MCCALLISTER -

12 Q I think it was your testimony a minute ago that you
13 met with Mr. Lourie four to five times over the course of
14 this -- of his representation.

15 A Yes, ma'am.

16 Q Is that right?. And that was over a three year
17 period?

18 A Yes, ma'am.

19 Q And where did those meetings occur?

20 A Alvin S. Glenn.

21 Q Okay. So you were in jail; you never bonded out or
22 anything like that?

23 A No, ma'am.

24 Q Okay. So he would come and visit you.

25 A Yes, ma'am.

1 Q Did you ever call his office or call him?

2 A No, ma'am.

3 Q Did you send him any letters?

4 A No, ma'am.

5 Q Did he send you anything?

6 A I think I got a -- I think I got a, um -- well, he
7 didn't send it to me. He brought it to me. When he came
8 in, he handed it to me.

9 Q What did he bring you? Like your discovery or ---

10 A No, I never got my discovery. Did I get my discovery?
11 Yes, I did. I got my discovery. Yes, I did. I got it.

12 Q Okay. So he brought you some documentation pertaining
13 to your case and the evidence against you.

14 A That -- uh, you said evidence in the case, but it
15 wasn't against me.

16 Q Okay. He brought you documentation of the evidence
17 that the State was gonna put up if you guys went to trial.

18 A Yes, ma'am.

19 Q Okay. And you guys had a chance to have discussions
20 about that evidence.

21 A Yes, we did.

22 Q Okay. And you had a chance to talk to him about what
23 your defense was, was gonna be. Is that right?

24 A Yes, ma'am.

1 Q And you said you didn't deny being there, but your
2 defense was that you just were in the wrong place at the
3 time, ---

4 A Yes, ma'am.

5 Q with the wrong people. Correct?

6 A (No response)

7 Q Okay. And that was what -- that was the defense that
8 you thought you guys were gonna present if you went to
9 trial.

10 A Yes, ma'am.

11 Q Okay. And that's the defense that you guys talked
12 about and agreed on together.

13 A Well, yes, ma'am, uh -- he had -- he had a piece of
14 paper showing the DNA. He was like -- he told me that's --
15 this was good. He said this is good, no DNA showing that
16 you was there. It was the victim's shoe. I believe it was
17 Jimmy Dunbar's DNA, Tomeka -- Tomeka -- I don't know her
18 last name. Tomeka, her DNA and Mr. Spencer.

19 Q Okay. And so those -- Tomeka is your -- is the female
20 co-defendant. Correct?

21 A Yes, that's Jimmy Dunbar's ---

22 Q And Jimmy was the male co-defendant.

23 A They was living together, yes.

24 Q Okay. And Mr. Spencer is the victim.

25 A The victim.

1 Q Okay. And so you -- you met -- you meet with Mr.
2 Lourie in the jail a couple of times. He brings you some
3 of the stuff that the State has got in terms of their
4 evidence in this case. You tell him your version of the
5 facts, and you guys come up with this defense that you're
6 not going to deny that you were there, but you just didn't
7 know that this was a planned ---

8 A Yes, ma'am.

9 Q --- what was gonna happen. Okay. And you said
10 earlier that you had given him some things to look into?
11 Correct?

12 A Yes, ma'am.

13 Q That you wanted him to investigate, and you mentioned
14 you wanted him to go to the co-defendant's house?

15 A Yes, ma'am.

16 Q Okay. And you -- was there a witness or somebody that
17 ---

18 A Yeah, they said -- they he said, uh -- sorry -- they
19 said it was a witness -- said, uh, the people across the
20 street from them, from Mr. Dunbar's house.

21 Q Okay, so you -- your understanding from discussions
22 with Mr. Lourie or through looking through your paperwork
23 was that there was a witness across the street.

24 A Yes, ma'am.

1 Q So you wanted Mr. Lourie to go and talk to that
2 witness.

3 A (Indicating yes)

4 Q And you told him this.

5 A Yes.

6 Q Okay. Did he ever come back to you and tell you what
7 happened with that?

8 A No, ma'am.

9 Q No. And did you ever ask him about that, what
10 happened ---

11 A Once, yes, I did.

12 Q Okay. And what did he tell you?

13 A He said he didn't go. He didn't have the time to go
14 yet.

15 Q Okay. When was that discussion? Was that -- that was
16 before you entered your guilty plea?

17 A Yes, ma'am.

18 Q Okay. So when you entered your guilty plea, you knew
19 that Mr. Lourie hadn't talked to the witness that you
20 wanted him to talk to.

21 A Yes, ma'am.

22 Q Okay. And then you said something else about a cell
23 phone? Can you explain that a little bit?

24 A Uh, basically, what it was, the cell phone -- I'm
25 looking in my records just saying the cell phone saying I

1 was in -- I was in the facility, but it's a ten mile
2 facility, 360 degrees ten miles ---

3 Q Okay.

4 A --- that said I was in the facility and all that. I
5 could've been any place in there within that ---

6 Q Okay. So what did you want Mr. Lourie to do with
7 those cell phone records?

8 A Oh, I felt -- when I was looking at the evidence --
9 when I was looking at the evidence, it was like -- I
10 thought that I was fruit from the poisonous tree as if I'm
11 using that term correctly, basically, saying -- if that
12 saying -- they saying that's what they base their case off
13 of that I was there. They based their case that I was --
14 the cell phone put me there. And I said, okay, well, I --
15 I'm -- I never denied that I wasn't there, but I'm saying
16 the evidence, the way they got the evidence from the -- for
17 the, uh, the cell phone, they just took my cell phone out
18 of my house without a warrant.

19 Q Okay, so you wanted him to challenge the admission of
20 the cell phone evidence.

21 A Yes, ma'am.

22 Q Okay. Did you have that discussion with him?

23 A Yes, I did.

24 Q Okay, and what did he tell you he would do about that?

1 A Well, you know, we went -- it was, uh -- I think it
2 was Investigator Montgomery. Investigator Montgomery. He
3 the one who said he got the cell phone from me, but that's
4 not true, because he never was there. He said -- matter of
5 fact, Investigator Montgomery said he took the cell phone
6 out of my pocket, and he never was at my house. The FBI
7 came to my house and picked me up ---

8 Q Okay.

9 A --- and took me there.

10 Q I'm asking -- I'm trying to get at what -- so you
11 wanted Mr. Lourie to challenge the cell phone evidence.

12 A Yes, ma'am.

13 Q And you told him you wanted him to challenge it.

14 A (Indicating yes)

15 Q And you told him, I assume, this vers -- your version
16 of these facts and how this ---

17 A Yes, ma'am.

18 Q --- how they would've come to have gotten this
19 evidence. Correct?

20 A (Indicating yes)

21 Q Okay. And what did he say when you told him that?

22 A Well, I -- I don't recall. I don't recall.

23 Q Okay. And did you ask him, hey, what's going on with
24 this cell phone evidence ---

1 A I brought it -- I brought it up. Yes, I brought it up
2 again, ---

3 Q --- okay -- before ---

4 A --- I know I brought it up again.

5 COURT REPORTER - I'm sorry, they're talking at
6 the same time. I can't get a clear record.

7 MS. MCCALLISTER - I'm sorry.

8 MR. AQUIL - I'm sorry.

9 Q You said you did bring it up, you did ask him, hey,
10 what's going on with this.

11 A Yes, ma'am.

12 Q Okay. And was that conversation where you asked him
13 that before you entered your guilty plea?

14 A Uh, it was -- it wasn't the same day. It was be -- it
15 was, what, probably weeks before.

16 Q Okay. So when you entered your guilty plea, you knew
17 that Mr. Lourie -- that you hadn't had a resolution about
18 whether this cell phone evidence could come in at trial or
19 not.

20 A Yes, ma'am.

21 Q Okay. Okay, and so you said that you were in Alvin S.
22 Glenn or -- were you -- you were in Alvin S. Glenn and then
23 a few days before your trial date they brought you here to
24 this courthouse?

25 A Yes, ma'am.

1 Q Okay. And you met with Mr. Lourie at that time.

2 A Yes, ma'am.

3 Q Okay. And at that meeting, that is when you're saying
4 Mr. Lourie changed from we can take this to trial to you
5 should take this plea.

6 A Yes, ma'am.

7 Q Okay. And if I'm understanding you correctly, Mr.
8 Lourie said, now your co-defendant is implicating you.

9 A Yes, ma'am.

10 Q Okay. And you're saying your understanding all along
11 is that your co-defendant ---

12 A Was implicating me before.

13 Q Okay. So you had two co-defendants. Is that correct?

14 A Yes, ma'am.

15 Q Okay. And so the -- the female co-defendant, Tomeka,
16 she was arrested first. Correct?

17 A I don't know.

18 Q Okay. Um, but both of your co-defendants at the end
19 were implicating you. Correct?

20 A Yes, ma'am.

21 Q Okay, so Tomeka and Jimmy -- if you had gone to trial,
22 Tomeka and Jimmy were gonna testify and say that you knew
23 all along what was going down.

24 A I guess so.

25 Q Okay. And Mr. Lourie explained that to you.

1 A Yes, he told me that, uh, the day we got here.

2 Q Okay. And you have said several times, you asked him,
3 well, why should I plead if there's no evidence. So what
4 was his response to you?

5 A He told me he couldn't win the case. He told me he
6 feel he couldn't win it, and I asked him -- I looked at
7 Overture -- Overture Walker, I believe, is his name -- Mr.
8 Overture, and he said I'm with Neal.

9 Q Okay, but did you ask Mr. Lourie why do you think you
10 think you can't win it?

11 A Because he say the, uh, my co-defendants.

12 Q Okay.

13 A He said, both of them going be State evidence of (sic)
14 -- he say I don't feel like can go over both of them. (sic)

15 Q Okay. So he advised you that you thought that because
16 now both of your co-defendants were gonna be testifying
17 against you that it was not a good idea to go to trial.

18 A Yes, ma'am.

19 Q Okay. And you testified that you trusted him and you
20 had a relationship with him.

21 A Yes, ma'am.

22 Q Okay, so you took his advice to heart.

23 A Yes, ma'am.

24 Q Okay. And by accepting this guilty plea, the State
25 withdrew their notice to seek life without parole. Correct?

1 A Yes, ma'am.

2 Q And you ended up with 30 years.

3 A Yes, ma'am.

4 Q Okay. Which was the minimum amount you could get on a
5 murder charge. Correct?

6 A Yes, ma'am.

7 Q Okay. And if you -- if Mr. Lourie was right and you
8 had gone to trial, you would have been sentenced to life
9 without parole if you were convicted.

10 A I don't know. I don't -- I don't know because I don't
11 know the outcome of the case if it tried.

12 Q I'm saying -- I understand that. I'm saying if you
13 had gone to trial and you were convicted, you would've been
14 convicted ---

15 A Yes, ma'am.

16 Q --- or you wouldn't been sentenced to life without
17 parole.

18 A Yes, ma'am.

19 Q So by accepting this plea, you got yourself out from
20 under the threat of life without parole.

21 A Yes, ma'am.

22 Q And I believe you testified earlier that that was part
23 of your consideration in entering the plea. Correct?

24 A Yeah, with -- yes, ma'am.

1 Q Okay. And there's been some -- some -- you testified
2 a little bit about talking to Mr. Lourie about lesser
3 included offenses? And you have said in your application
4 that he failed to advise you about that. Can you explain
5 that to me a little bit?

6 A Um, basically, with, uh -- we talked about lesser
7 included offenses once he came to the point to telling me
8 to plea. Once he told me to plea and I was like, well,
9 then plea to this, I said how much time I would get if I
10 plea? He told me the 30 years. I said how is that
11 possible I would get 30 years? I said I'd be a very old
12 man when I get out of jail. I asked about a lesser
13 included offense.

14 Q Okay.

15 A And I said how can that -- I said, well, why am I
16 being charged with murder whenever I felt I didn't kill
17 nobody. I said -- I asked about the accessory after the
18 fact, because I know I was there, and he -- we went on from
19 there -- from that conversation -- he was like he -- he
20 don't believe I can get that.

21 Q Okay, so you asked him to seek out a plea to a lesser
22 included offense, but he told you that -- he never came to
23 you -- came back to you ---

24 A No, ma'am.

25 Q --- and said that that was a possibility.

1 A No, ma'am.

2 Q Okay. Did he explain to you that the State doesn't
3 have to offer you a lesser included offense?

4 A No, ma'am.

5 Q Okay. And I think you told Ms. Zmroczek that you
6 remember the day of your plea, and you remember going and
7 talking in front of the Judge. Correct?

8 A Do I remember?

9 Q Yes.

10 A Yes, ma'am.

11 Q And you remember that the Judge put you under oath.

12 A Yes, ma'am.

13 Q Okay. And the Judge asked you some detailed questions
14 about your case and about entering the plea and your
15 conversations with your attorney. Correct?

16 A Yes, ma'am.

17 Q Okay. And the plea, actually, came about because you,
18 actually, offered a confession -- correct? -- and you
19 admitted your involvement in this -- in this crime.
20 Correct?

21 A I admitted that I was there.

22 Q Okay. And that led the State to agree to drop the
23 LWOP and offer you these 30 years.

24 A Yes, ma'am.

1 Q Okay. And the solicitor put the facts on the record,
2 that -- the facts that they felt like they could prove at
3 trial. Correct?

4 A I don't know.

5 Q Do you remember that?

6 A No, ma'am.

7 Q Okay. You remember being asked whether you agreed
8 with what the solicitor was saying?

9 A No, I don't remember that.

10 Q You don't remember that? Okay. Do you remember being
11 asked if you were satisfied with your attorney?

12 A Yes, I do.

13 Q Okay. And do you remember saying that you thought
14 that they had done everything you had asked of them?

15 A Yes.

16 Q Okay. And you told the Judge that you had enough time
17 to prepare with them for trial and you didn't need anymore
18 time to talk about this decision with them.

19 A That's what -- you saying that's what I told the
20 Judge?

21 Q Yes.

22 A I don't remember that.

23 Q I'm paraphrasing. I'm not saying you said those exact
24 words, but ---

25 A Oh, -- no, ma'am.

1 Q You don't remember saying that?

2 A No, ma'am.

3 MS. MCCALLISTER - Okay. Your Honor, may I
4 approach this witness?

5 THE COURT - Yes.

6 Q I'm going to show you -- look down here on the very
7 bottom. I think it's starts at line ---

8 (WHEREUPON, WITNESS READING BUT IS MUMBLING TO
9 HIMSELF)

10 A Preparing for what? Prepare for trial?

11 Q Well, I mean -- that's the question -- I mean this --
12 you agree with me that the transcript reflects the Court
13 asked you, you have spent as much time as necessary with
14 them for them to properly represent you, and you told the
15 Court, yes, ma'am, based on this -- these lines in the
16 transcript.

17 A Okay. After I was going to trial, yes, ma'am.

18 Q Okay. And you recall telling -- do you recall telling
19 the Judge that you were pleading guilty freely and
20 voluntarily and nobody had forced you into this?

21 A Well, I wasn't forced. The only thing I -- I was
22 recommended by my lawyer.

23 Q Okay.

24 A I'm just following -- yeah, I'm just follow -- because
25 I don't -- I'm not -- I'm not -- say I'm obvious to the

1 law, uh, the trials, the law, trials and all. That's why I
2 got -- I went to somebody that I trusted, so

3 Q Okay.

4 A --- he can explain most of it to me.

5 MS. MCCALLISTER - My approach one more time, Your
6 Honor?

7 THE COURT - (Indicating yes)

8 Q Do you remember -- do you recall going over a plea or
9 a sheet with questions on it with one of your attorneys
10 that you signed off on? Do you remember ---

11 A No, I -- no, I remember signing, um, putting my
12 initials on it like that.

13 Q Okay.

14 A He just told me to put my initials here, here, here
15 and here.

16 Q Is that your handwriting then, those initials right
17 there?

18 A Yes, ma'am, that's my initials.

19 Q And then that's your signature on the back there?

20 A Yes, ma'am.

21 Q Okay. And you remember filling this out with Mr.
22 Lourie?

23 A I didn't read it.

24 Q Okay. Did he read it to you?

25 A No, ma'am.

1 Q He just told you to sign it, and so you signed it.

2 A He said sign it here, here and here.

3 Q Okay.

4 MS. MCCALLISTER - Your Honor, I would ask to
5 admit this as State's Exhibit 1.

6 THE COURT - Any objection?

7 MS. ZMROCZEK - No objections, Your Honor.

8 THE COURT - Okay, entered into evidence.

9 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
10 STATE'S EXHIBIT NUMBER 1)

11 MS. MCCALLISTER - I think that's all the
12 questions I have Mr. Aquil.

13 MS. ZMROCZEK - And just very briefly, Your Honor.
14 You can still hear me. Correct?

15 MR. AQUIL - (Indicating yes)

16 RE-DIRECT EXAMINATION

17 BY MS. ZMROCZEK -

18 Q I just wanted to ask you one question following up,
19 she -- Ms. McCallister asked you about the threat of LWOP,
20 ---

21 A Yes, ma'am.

22 Q --- because when you were arrested, did they
23 immediately serve you with the LWOP notice?

24 A No, ma'am.

25 Q Okay. How close to your trial was that done?

1 A About five days.

2 Q Okay. So right before a trial all of a sudden you get
3 this LWOP notice.

4 A Yes, ma'am.

5 Q Okay. And that -- that kind of changed the game.
6 Right?

7 A Yes, ma'am.

8 Q Because, like you said, it was the rest of your life
9 or -- or you plead.

10 A Yes, ma'am.

11 MS. ZMROCZEK - Okay. Thank you. Those are all
12 the questions I have, Your Honor.

13 THE COURT - Okay, thank you.

14 EXAMINATION

15 BY THE COURT -

16 Q Mr. Aquil, I just want to make sure you understand,
17 sir, that in a PCR proceeding, there's one of two things
18 that I can do, ---

19 A Yes, ma'am.

20 Q --- I can deny your PCR application, and in this case
21 you'll just continue to serve out the remainder of your
22 sentence or I can grant your application for relief.

23 A Okay.

24 Q If I were to grant your application for relief, it
25 doesn't mean that you just walked away a free man.

1 A Yes, ma'am.

2 Q It means that you go back to -- back in the same
3 posture you were in before you entered this guilty plea.

4 A Okay.

5 Q Any negotiations or plea offers would be off the
6 table, and there's no guarantee that the State would make
7 you any plea offer at that point.

8 A Okay.

9 Q So you would still be facing a murder charge that
10 could carry 30 years to life and a kidnapping charge that
11 would carry up to 30 years, an armed robbery charge that
12 would carry ten to 30, I believe.

13 MS. ZMROCZEK - Ten to 30.

14 Q In addition, you'd still be facing a conspiracy charge
15 and the two weapons violations.

16 A Yes, ma'am.

17 Q So just want to make sure you understand, because you
18 could get significantly more time if this were to go back
19 and you were to be granted a new trial, you could get
20 significantly more time up to and including life
21 imprisonment. So I just want to make sure that you're
22 aware of that and that you do want me to consider your
23 application for ---

24 A Yes, ma'am.

1 Q --- post conviction relief. And you're aware of what
2 the consequences are if I were to grant your application.

3 A Yes, ma'am.

4 Q And you've had a chance to discuss that with your
5 attorney.

6 A Yes, I have; we have.

7 THE COURT - Okay, thank you.

8 MR. AQUIL - Thank you.

9 THE COURT - Thank you; you can step down.

10 MR. AQUIL - Thank you, ma'am.

11 MS. ZMROCZEK - Those are all the witnesses.

12 Thank you.

13 MS. MCCALLISTER - Your Honor, the State calls
14 Neal Lourie.

15 NEAL LOURIE, AFTER BEING FIRST DULY SWORN,

16 TESTIFIES AS FOLLOWS -

17 BAILIFF - State your name.

18 MR. LOURIE - My name is Neal Lourie.

19 DIRECT EXAMINATION

20 BY MS. MCCALLISTER -

21 Q Mr. Lourie, where are you currently employed?

22 A My own law firm, Lourie Law Firm.

23 Q Okay. And how long have you had your own firm?

24 A I took over the firm for my father in the year 2000.

1 Q Okay. And do you recall representing Mr. Aquil on
2 these charges?

3 A I do.

4 Q Okay. And did he retain you?

5 A I -- he -- I was appointed, but it was a requested
6 appointment, ---

7 Q Okay.

8 A -- meaning he had been appointed another lawyer before
9 I was involved, and I knew Mr. Aquil; I knew his family;
10 they wanted me to help, and so we got the appointment
11 switched to me at their request.

12 Q Okay. And so how long were you on this case before
13 Mr. Aquil entered his guilty plea?

14 A I was appointed in January of 2013.

15 Q Okay. And he pleaded guilty in March of 2013, so a
16 little over two years.

17 A That's correct.

18 Q Okay. And in that time, how many times do you -- do
19 you know if you met with Mr. Aquil?

20 A I've got it all documented, and he knows this, it's a
21 lot. I would go down there multiple, multiple times with
22 my investigator. I gave him a notebook of discovery and I,
23 actually, would bring my laptop, and we would look at the
24 evidence as well, the pictures and everything. I mean I

1 can start naming dates if you want as I go through this,
2 but it's a lot, ---

3 Q Okay.

4 A --- significantly more than he has testified to,
5 significantly.

6 Q Would you say something like once a month, twice a
7 month?

8 A I would say once a month probably, something like
9 that.

10 Q Okay. So once a month for two years, ---

11 A Yes.

12 Q --- so, approximately, 24 times maybe?

13 A Yeah, and maybe a little less but it -- we stayed in
14 constant communication with him.

15 Q Okay. And you -- you just testified a minute ago that
16 you had an investigator?

17 A Yes.

18 Q Okay. Is that somebody that you hired, specifically,
19 for this case or ---

20 A Both.

21 Q Okay.

22 A So I had an internal investigator that worked for me
23 part-time, Investigator Jones, who worked on the case. We
24 also were granted through the indigent defense fund funds

1 to hire an investigator to look at the phone records and do
2 some other stuff on the case.

3 Q Okay. And let's talk about the case for a minute. He
4 has -- he had six charges. Correct?

5 A Correct.

6 Q Obviously, the most serious being the murder,
7 kidnapping and armed robbery charges.

8 A Correct.

9 Q Okay. And can you talk a little bit about just kind
10 of the facts of this case and ---

11 A Sure.

12 Q --- evidence?

13 A So he is correct, in the beginning there was no real
14 evidence against him other than one co-defendant, Tomeka
15 Moore, so what happened is, when they found the victim dead
16 -- the victim had been killed and then set on fire -- they
17 were able to get the victim's cell phone records and the
18 last phone call he had was with Ms. Tomeka Moore, was one
19 of the co-defendants, and they went and picked her up, and
20 she confessed and implicated her boyfriend, Jimmy Dunbar,
21 and Mr. Aquil. And so at that point I felt like we had a
22 good chance of beating the case, because there was only one
23 co-defendant. I felt that her story was not believable,
24 and I did get concerned because she had testified -- they
25 had found some blood in the house, and I did go to the

1 house, the scene, at some point and look at it, and I was
2 worried that that, um -- she had testified that the victim
3 had not gone in the house, but there was blood found in the
4 house, so I was concerned when we found out that none of
5 the blood belonged to the victim. In other words, her
6 story was corroborated when we started getting the evidence
7 that it showed the victim had not gone in the house, and
8 that started making me a little bit more concerned. Mr.
9 Aquil and I had talked extensively about the fact that with
10 one co-defendant, no murder weapon, no DNA evidence tying
11 him to it, that we had a chance. There were some cell
12 phone records that put him in the area close to the scene
13 and -- but we had talked about if Jimmy Dunbar had ever
14 decided to roll on him, we had a huge problem, so much to
15 the extent that Mr. Aquil requested that we set up a
16 meeting at the jail with Mr. Dunbar and his lawyer at the
17 time -- and I can't remember her name -- and I was there
18 and Mr. Aquil was there. Mr. Aquil wanted to look at Jimmy
19 Dunbar and look at him in the face and make sure that they
20 agreed that nobody was going to talk. We were prepared to
21 go to trial. I had met with Amy Durso who had done the
22 autopsy. There was a witness that I had sent my
23 investigator to meet out at jail that was willing to
24 testify that Tomeka Moore admitted that she lied in her
25 statement, so we had done a lot of things, and him and I

1 had spoke about whether we were gonna put up a case or
2 whether we were just gonna attack their evidence, because
3 the -- the problem we were trying to look at is he said he
4 -- first he said he wasn't there, and my notes will say
5 that, but we didn't have an alibi. Later on it switched
6 that he was there, but he didn't partake in it. So two
7 things changed, substantially, that caused this case to
8 change to where I thought it was winnable, and I had told
9 him this early on, the biggest thing was going to be two
10 co-defendants saying he was there. That happened several
11 days before trial, Dunbar and, uh -- gave an statement
12 implicating him. The other was, there was some witnesses
13 across the street, and if I remember correctly, they had
14 given a very generic statement that didn't really implicate
15 Mr. Aquil. The police had gone back to interview these
16 witnesses across the street, and this statement concerned
17 me greatly. They -- they knew Tomeka Moore, because she
18 lived there, and said that they saw her cleaning up blood
19 outside, which would make sense, because that's where a lot
20 of the blood was found, and that she -- the witnesses said
21 across the street that they kept on hearing Dunbar refer to
22 a large African-American male by a muslim name, and that
23 fit his description. So now we had two witnesses --
24 additional witnesses that were describing someone that
25 looked like him at the scene and now the co-defendant

1 coming forward, and then one other thing that happened late
2 was they said they had evidence of the shoes that they
3 found at his house matching some prints at the scene, but
4 that one to me wasn't the biggest -- the biggest concern.
5 So, you know, I have a pretty detailed note from March 15th
6 where -- I mean I can read it or whatever, but it just --
7 things -- that changed drastically, and one of my other
8 concerns was -- and we discussed this -- because he had
9 said that he had not done the hitting with the gun -- okay?
10 -- but that he had helped put the body in the car. Well,
11 there some was concern based on Tomeka Moore's statement
12 that the person was alive still when he was put in -- the
13 back -- I said the car -- the back of a truck. And we had
14 this discussion, can you kidnap somebody that's dead, and
15 so what I was worried about, that a jury could find him not
16 guilty of the murder -- and he'll -- he remembers this --
17 we had this very detailed discussion, because he wasn't the
18 one using the gun, and, of course, I -- when I met with the
19 Forensic Pathologist, Amy Durso, she said the injuries to
20 the head were from blunt force trauma. But if the jury
21 could found (sic) that he was guilty of the armed robbery
22 or the kidnapping, it was guaranteed life, because they had
23 served us with life without parole. I can't remember the
24 date they served us; it would be on file, so ---

25 Q Okay.

1 A --- even -- so my point was, we had this discussion,
2 even if we could beat the murder with his defense that he
3 wasn't the one doing it, we also during that conversation
4 discussed the felony murder rule and hand of one/hand of
5 all, and like I said, if we couldn't beat all of the
6 charges, it was gonna be bad, because all they needed was
7 one.

8 Q Okay. Okay, and so you said that you had this
9 discussion with him about receiving the life -- the notice
10 that they were seeking life without parole and how that
11 kind of changes your calculations at trial.

12 A Correct.

13 Q Okay. And -- so he -- you would've needed to have an
14 acquittal on all three of those charges because of his
15 previous record.

16 A Correct.

17 Q Okay, so his previous record was, I guess, a most
18 serious strike, because it would've only needed one.

19 A Yes, and we -- and he received a letter from me. I --
20 one of the issues he wanted to research is he was a
21 juvenile when that occurred, and we researched that issue
22 and sent it to him what the cases said that they still
23 could use it.

24 Q Okay. Okay, so you looked into the life without
25 parole and whether that notice was valid, and you talked to

1 him about how if this notice is valid, this is how it
2 changes the calculation and you talked to him about the
3 fact that there was additional evidence coming in that was
4 changing your calculation of how wonderful the case was.

5 A Correct.

6 Q And that all occurred on this March 15th meeting date?
7 Is that the right ---

8 A Cumulated in that, yes.

9 Q Okay.

10 A I had started getting worried when I was calling
11 Dunbar's attorney -- and I can't remember it was the time
12 (sic) -- and they weren't calling back.

13 Q Okay.

14 A So, you know, I had been down to see him and, you
15 know, we had -- and I made it clear, he knew as well as I
16 knew, that things would change if Dunbar rolled, and that's
17 why he wanted that meeting.

18 Q Okay. So you have this meeting and then sometime
19 after the meeting Dunbar's attorney stops taking your calls
20 and you start getting worried, that means that he's
21 rolling.

22 A Yes.

23 Q Okay, did you warn Mr. Aquil about that?

24 A Yes.

1 Q Okay. And then you start getting all these other
2 factors in that we've just talked about, and it,
3 ultimately, ends up in his one big kind of powwow meeting
4 here at the courthouse.

5 A Correct.

6 Q Okay. And that's the meeting that you have detailed
7 in your notes. Correct?

8 A Correct. And I went to the jail the day before and
9 discussed it with him, too. It's mentioned in here.

10 Q Okay. And at that meeting -- what happened at that
11 meeting, that meeting here in the courthouse?

12 A Okay, let me -- can I look at my note?

13 Q Yes.

14 A All right, this is a note dated March 15th, 2015. The
15 last week has been crazy. I began to suspect that co-
16 defendant, Jimmy Dunbar, was cooperating with the State
17 since I had left three messages for his attorney to call me
18 back over the last ten days, but she failed to do so. Up
19 until Friday a.m. our client had denied that he was even
20 present at the scene. He had told his family that he was
21 not there. He indicated that Jimmy Dunbar was going to
22 tell the police offi -- tell the police, solicitor office
23 that he had nothing to do with the crime. Up until this
24 week, we could've argued that he was not present since the
25 only evidence of him being there was Tomeka Moore's

1 statement. However, we received word early in the week
2 that Dunbar was cooperating and claiming that our client
3 was present and helped plan the robbery. He was also
4 claiming that Yusuf helped beat the victim and kill the
5 victim. He also stated that it was Yusuf's idea to burn
6 the body and that Yusuf did burn the body. In the last
7 several weeks we also received two additional statements
8 from neighbors across the street. They claimed Tomeka was
9 cleaning up blood and that Dunbar was hitting the victim.
10 They claimed they saw a big strong man pick up the victim
11 and throw him in the truck. They claimed the big man had a
12 muslim name. This in conjunction with the cell phone
13 records -- and I don't remember but there was something
14 about text messages as well, and I don't remember, but I've
15 got that noted -- it was not good for us -- um, and co-
16 defendant statement make it very likely that he would be
17 convicted. As I took -- as I explained to client on
18 Wednesday, they only need to convict him on one of the most
19 serious charges and that would send him to life. Most
20 serious were kidnapping, armed robbery or murder. I told
21 him that possibly I could beat the murder charge, but he
22 would still get life because of the other convictions. We
23 met with client on Wednesday. At the same time we asked
24 him for the truth, and he told us that he was selling weed
25 that day and Starnes was driving him around. He only had a

1 little bit of weed left and Dunbar told him he could hook
2 him up. He claims he went to Tomeka's house, and Dunbar
3 got there at the same time. Dunbar went in the house and
4 found victim have sex with his girlfriend, Tomeke Moore.
5 He said Dunbar lost it and beat the victim up with his gun.
6 He said he helped get rid of the body, and it was his idea
7 to burn the body, but he never burned the body, that Dunbar
8 had. I asked him if this was the truth, because he got
9 very nervous when telling the story. I told him that I
10 thought he was not being honest with me. He swore that was
11 what happened. Overture Walker was with me, so was Robert
12 Chambers who worked for me. We had gone there to tell him
13 about Jimmy rolling on him. We tried to talk to the
14 solicitor's office based on what he had said, and they were
15 not buying it. Overture was in touch with Dolly Justice
16 several times Wednesday night. The solicitor's office said
17 they were meeting with Dunbar on Thursday and they would
18 let us know what he said. Once we learned Thursday
19 afternoon that Dunbar had completely implicated Yusuf, we
20 went first thing Friday morning to see Yusuf and tell him
21 that. He broke down and cried and admitted that he helped
22 plan the crime, and they were gonna tie Cowboy up and get
23 his keys -- Cowboy is the victim -- and get his keys and go
24 to his house to get the money and the drugs. He said that
25 Dunbar asked him to help and that he should've said no. He

1 claims he got gas can -- the gas can at his parent's house,
2 and the reason he had showed up on the phone calls on I-77
3 near Fort Jackson is he was going home to North Main
4 Street, because that's where the phone records had shown
5 him in that area at some point. He said that Dunbar pulled
6 over in Oakclair (sic) and pulled Cowboy's shoes off and
7 pants off and found his wallet. Client -- and that was one
8 of the reasons I sort of believed him in the story, because
9 the victim -- the pictures of the victim's body he didn't
10 have any pants on and so -- and he was missing a shoe, and
11 so maybe there was some truth to this story about the sex
12 between Tomeka Moore and the victim -- claims Dunbar parked
13 down street from gas station on North Main and walked to
14 get some gas to burn body. I told him at this point we
15 were trying to save him from life so he would have a chance
16 of not dieing in prison. He understand (sic) and said he
17 wanted to talk to the State and tell his story. I told him
18 very clearly, it was his decision, but I did not think we
19 could beat all charges. Told him if he wanted a trial, we
20 -- he could do that. We discussed felony murder rule, hand
21 of one/hand of all. He wanted to know if it was possible
22 to kidnap a dead person. I told him if that is our
23 defense, we are in trouble, because that put him at the
24 scene, and that was not a very good defense. We discussed
25 the deal and that they would withdraw life without parole

1 and they would consider what he said afterwards and what
2 else they could do. We went down and met with the client
3 and reviewed everything -- and this is the next day -- with
4 him at the courthouse. He again stated he did not want
5 trial and understood that by talking it took life without
6 parole off the table, explained murder still carried 30 to
7 life and he would have to do day-for-day. We had tried to
8 get a voluntary manslaughter or accessory after-the-fact
9 but solicitor's office was not willing to negotiate any
10 lower. We met in the jury room on third floor,
11 Investigator Montgomery and solicitor's office and my
12 staff; client waived his rights, told what happened.
13 Afterwards, we were told they would give 30 years minimum,
14 explained to him 30 meant 30; he understood and started to
15 cry. I told him I needed to be able to discuss this with
16 his dad. He allowed me to tell his dad that he, indeed,
17 committed the crime. I told him the truth would set him
18 free. I met with the dad today and told him the above. He
19 agreed with everything and said the truth would set him
20 free. He was happy with our representation. So that's --
21 that's my pretty detailed note about those last several ---
22 Q Okay.
23 A --- days. I'm sorry I -- I just think it needed to be
24 on the record.

1 Q Thank you. Okay, so you've covered a couple of things
2 in there that I think he's brought up. So you did approach
3 the solicitor's office about some lesser included offenses.

4 A Absolutely.

5 Q And they were not willing to go there.

6 A No.

7 Q Okay.

8 A Because of the nature of the crime.

9 Q Okay. And you explained that to Mr. Aquil.

10 A Yes.

11 Q Okay. You, um -- ultimately, the decision to kind of
12 waive his rights and confess to the solicitor's office was
13 done in consideration of having the life without parole
14 removed from the table.

15 A That's correct.

16 Q Okay. And they honored that bargain. That's what
17 they did.

18 A Yes.

19 Q Okay. And at that point in time when you went into
20 the plea, did you instruct Mr. Aquil about how to answer
21 the Judge's questions?

22 A No, I -- I mean we always tell them to an -- to tell
23 the truth.

1 Q Okay. And did you feel at that point in time that he
2 was making the decision to plead guilty freely and
3 voluntarily?

4 A Yes.

5 Q Okay. And did you go over that plea sheet, plea kind
6 of agreement sheet, with him?

7 A Yeah. I went ---

8 Q Okay.

9 A I mean I try to do this on all the cases, but,
10 especially, when someone's looking at significant time, I'm
11 not just gonna tell them to sign him and not read it.

12 Q Okay, so do you recall reading it to him?

13 A Oh, yeah, of course.

14 Q Okay. So you read over each item on the sheet with
15 him and had him initial and sign it.

16 A Correct, yes.

17 Q Okay. And if he had decided that he did not want to
18 go and talk to the solicitors and he wanted to go to trial,
19 were you prepared to take this case to trial?

20 A Yes, absolutely.

21 MS. ZMROCZEK - That's all I have, Your Honor.

22 THE COURT - Ms. McCallister?

23 MCCALLISTER - Mr. Lourie, I want to just ask you
24 a few things.

25 CROSS EXAMINATION

1 BY MS. ZMROCZEK -

2 Q You were appointed in January of 2013, but, obviously,
3 he was arrested September, 2012. Right?

4 A Yes.

5 Q And, um -- and I believe that you even filed a motion
6 to dismiss. Do you recall that?

7 A Yeah, there was a couple I think filed.

8 Q Okay. And, in fact, specifically, the one that you
9 filed on October 14th of 2014, which was still -- November,
10 December, January, February, March -- five months before he
11 pled, you had filed another motion because in that motion
12 you had said that -- and you outlined when he was arrested,
13 when he was denied bond, that on August 12th of 2013 that
14 you had filed a motion for a bond reduction and a speedy
15 trial. So you had asserted his speedy trial rights.

16 A Correct.

17 Q And -- and that at that time Judge Hood denied both
18 motions but indicated that you could re-file in March of
19 2014, and that you did that and that you appeared again in
20 front of him in April of 2014 for another bond motion and
21 another speedy trial motion, and he took them under
22 advisement at that time.

23 A I can't remember but ---

24 Q Okay, I -- I'm just reading from your ---

25 A That's -- yeah, that's what it says, the document.

1 Q Okay. And ---

2 A There were several I filed. I can't remember when,
3 what and all that.

4 Q Right. And they -- they were filed with the Court.
5 Right?

6 A Yes.

7 Q Okay. And that -- I'll just let you read so. I mean,
8 obviously, I'm not trying to trick you.

9 A No.

10 Q And it -- so you had had at least two speedy trial
11 motions ---

12 A Right.

13 Q --- denied, and then y'all were still waiting on SLED
14 two and a half years or so after this event.

15 A Yes. Judge Hood made SLED -- I've never seen this
16 before and I told him -- he was concerned and we had a
17 meeting in Judge Hood's chambers and he required someone
18 from SLED to come down and explain to him why it was taking
19 so long, and I think he was satisfied with the explanation.

20 Q Okay. And then do you know if -- was this -- was this
21 last -- the third motion ever ruled upon?

22 A I don't remember.

23 Q Okay.

24 A I don't remember.

1 Q Okay. So -- so what I hear from this case is that it
2 just kind of sat around and then all of a sudden things
3 really started to build up. You would agree with me that
4 the threat or -- the use of LWOP is a very powerful tool
5 that the State has.

6 A Yeah, but I -- I do want to say, we had discussed
7 early on that it could flip like that.

8 Q Right.

9 A So I mean that ---

10 Q But he was aware of it, but it -- just -- I mean the
11 State just didn't bother ---

12 A Right.

13 Q --- to do anything until right before ---

14 A Because they were having trouble getting the evidence
15 from SLED -- they were only able to do five pieces of
16 evidence at a time. There was so much evidence. Most of
17 it didn't apply to us anyway, but still.

18 Q Okay. And that was the thing, and most of it didn't
19 apply.

20 A Correct.

21 Q So but then as the LWOP notice comes in and then all
22 of a sudden we start to get more detailed witness across
23 the street notes and ---

24 A Yeah.

25 Q --- and then Jimmy Dunbar. Right?

1 A Yeah. And I can't remember when it did come in. The
2 record would show. I don't remember, specifically, when it
3 did come in.

4 Q Okay. But -- but for a long time it -- you were
5 waiting.

6 A Right. There was no evidence except Tomeka Moore for
7 the longest time and some cell phone records, but ---

8 Q And so had -- could Judge Hood or somebody granted
9 some of these motions, we don't know what -- if that
10 evidence would've ever materialized. Right?

11 A I mean I -- if he granted it, I felt like he would
12 grant him a bond. I never thought that he was gonna make -
13 - grant a motion to dismiss.

14 Q Okay. And none of the delays for the -- for -- none
15 of the delays in timing were due to you. You weren't
16 asking for continuances, were you?

17 A Not that I can recall.

18 Q Okay. These were all attributed to the State. And by
19 the State I mean ---

20 A Yes, that ---

21 Q --- law enforcement, SLED ---

22 A To the best of my knowledge.

23 Q Okay. Okay, so you were never asking for
24 continuances.

1 A Not that I can recall. Now, if there's something
2 there that says otherwise, but I ---

3 Q No, no, no, no, ---

4 A I mean it's been so long, I'd have to look, but I
5 don't recall that happening.

6 Q Right. In fact, I think you were very detailed in
7 that line. You kept trying to push for something.

8 A Right.

9 Q Okay. And -- and then they agreed to withdraw the
10 LWOP notice. And you said that you had done some research
11 into whether the juvenile offenses were applicable?

12 A That's correct.

13 Q Okay. And -- and so the best negotiations -- and so
14 you were able to negotiate -- I mean they claimed they had
15 this really strong case against him, but then they did
16 offer you the very mandatory minimum for murder -- right? -
17 -- which ---

18 A Right.

19 Q And then they all followed it through.

20 A Right.

21 Q Okay.

22 MS. MCCALLISTER - Thank you, Your Honor. That's
23 all I have.

24 MS. ZMROCZEK - Just very briefly.

25 RE-DIRECT EXAMINATION

1 BY MS. MCCALLISTER -

2 Q Do you recall the State saying at the plea that they -
3 - they agreed to the minimum, because Mr. Aquil confessed?

4 A Correct.

5 Q And that was closure for the victim's family.

6 A Correct.

7 Q Okay.

8 A It was not guaranteed. The only thing
9 that was guaranteed for the confession was that he would
10 not have the LWOP if he would come talk; that would be off
11 the table, but they -- I mean they weren't gonna just let
12 him -- if he went in there and just lied and told a story,
13 then they weren't gonna -- but they knew he was telling the
14 truth.

15 Q Okay. And you said a minute ago that for a long time
16 there was no evidence except for Tomeka's statement and the
17 cell phone records, ---

18 A Yeah.

19 Q --- and you looked into those cell phone records.

20 A Yes.

21 Q And you looked into whether they were valid and
22 obtained, appropriately, and all that.

23 A Yes, yes.

24 Q Okay.

1 A So, in fact, -- I need to add this -- because one
2 thing he was talking about the cell phone, he kept on
3 telling us -- because the investigators testified at one of
4 the hearings that he took the cell phone out of the
5 suspect's pants when they arrested him. Well, Mr. Aquil
6 told us he didn't have pockets in his pants. We went and
7 looked at all the evidence, and he did have pockets that
8 day, and he remembers we discussed that with him.

9 Q Okay. Okay, and in terms of getting a speedy trial,
10 you made all the motions; you had them heard, and they just
11 weren't granted.

12 A Correct.

13 MS. ZMROCZEK - Okay. Thank you.

14 THE COURT - Okay. Thank you.

15 MR. LOURIE - Okay, thank you. May I be excused?

16 THE COURT - Yes, sir.

17 MR. LOURIE - Thank you.

18 THE COURT - And I will look carefully at this and
19 take it under advisement.

20 (END OF TRANSCRIPT)

21

22

23

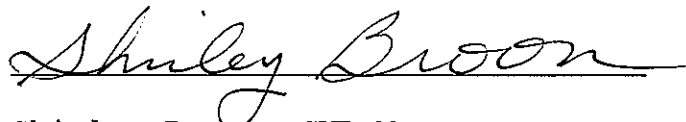
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 62 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Yusuf Karim Aquil vs. State of South Carolina, as taken by me in The Court of Common Pleas for the Fifth Judicial Circuit on February 20, 2019 and provided by me this the 6th day of April, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina



3/16/15

Yusuf Aqil

CRIMINAL PLEA

NAME:

CHARGES PLEADING GUILTY/NO CONTEST TO:

MURDER, KIDNAPPING, ARMED ROBBERY

POTENTIAL PUNISHMENT FOR ABOVE CHARGES:

MURDER 30-LIFE
 Negotiation
 30 yrs (day for day) Life w/o Parole
 Kidnapping 0-30
 Armed Robbery 10-30

WARRANT/INDICTMENT NUMBERS PLEADING TO:

202 A 40216 01011, 12, 13

DATE OF GUILTY PLEA: 3/16/15

DATE OF SENTENCING: 3/16/15

JUDGE:

Benjamin

NEGOTIATIONS IF ANY:

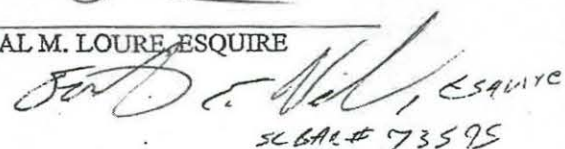
30 yrs (day for day) • Life w/o Parole

WAIVER OF RIGHTS-INITIAL EACH STATEMENT BELOW:

1. I AM PLEADING GUILTY/NO CONTEST TO THE CHARGE(S) LISTED ABOVE. Y/A
2. I UNDERSTAND THE CHARGES THAT I'M PLEADING TO AND THE POSSIBLE PUNISHMENTS. Y/A
3. I UNDERSTAND THAT I'M WAIVING MY RIGHT TO A TRIAL BY JURY BY PLEADING GUILTY/NO CONTEST. Y/A
4. I UNDERSTAND THAT BY PLEADING GUILTY/NO CONTEST I'M WAIVING MY RIGHT TO REMAIN SILENT. Y/A
5. I UNDERSTAND THAT BY PLEADING GUILTY/NO CONTEST I'M WAIVING MY RIGHT TO CONFRONT AND CROSS-EXAMINE ANY WITNESSES AGAINST ME. Y/L
6. I UNDERSTAND THAT BY PLEADING GUILTY/NO CONTEST I'M WAIVING MY RIGHT TO PRESENT ANY POTENTIAL DEFENSES THAT I MAY HAVE TO THE CHARGES. Y/A
7. I AM SATISFIED WITH THE SERVICES OF ATTORNEY NEAL M. LOURIE. Y/A + overture waiver
8. MY ATTORNEY NEAL M. LOURIE HAS DONE EVERYTHING I HAVE ASKED OF HIM. Y/A overture waiver
9. I AM PLEADING GUILTY FREELY AND VOLUNTARILY AND OF MY OWN FREE WILL. Y/A or overture waiver
10. NO ONE, INCLUDING ATTORNEY LOURIE, HAS FORCED ME TO PLEAD GUILTY. Y/A
11. NO ONE HAS THREATENED ME OR MADE ME ANY PROMISES (EXCEPT PLEA NEGOTIATIONS) TO GET ME TO PLEAD GUILTY. Y/A
12. I AM PLEADING GUILTY BECAUSE I AM GUILTY OR I'M PLEADING NO CONTEST BECAUSE I BELIEVE THERE IS MORE THAN ENOUGH EVIDENCE TO CONVICT ME AT A TRIAL BY JURY. Y/A

13. I AM NOT ON ANY DRUGS/ALCOHOL THAT PREVENTS ME FROM UNDERSTANDING TODAY'S EVENTS. Y/A
14. I DO NOT HAVE A MENTAL ILLNESS THAT PREVENTS ME FROM UNDERSTANDING TODAY'S EVENTS. Y/A
15. W IF THE CASE HAS NOT BEEN PRESENTED TO THE GRAND JURY, I HEREBY WAIVE MY RIGHT TO HAVE CASE HEARD BY THE GRAND JURY. W


CLIENT SIGNATURE


NEAL M. LOURE, ESQUIRE

SL BAR # 73595

3-16-15
DATE

3/16/15
DATE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Yusuf Karim Aquil, #226843,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2016-CP-40-1661

ORDER OF DISMISSAL

RECEIVED
FILED
2019 MAY 22 PM 3:44
JAMETIE H. McBRIDE
CLERK, S.C.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Yusuf Karim Aquil (Applicant), through counsel, on March 15, 2016. Respondent made its Return on July 11, 2017. An evidentiary hearing into the matter was convened on February 20, 2019, at the Richland County Courthouse before the undersigned. Aimee J. Zmroczek, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. Neal Michael Lourie, Esquire, Applicant's plea counsel, was also called to testify. This Court also had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County.¹ Applicant was indicted at the January 2013 term of the Grand Jury for Richland County for one count each of murder (2013-GS-40-0591), kidnapping (2013-GS-40-0587), armed robbery (2013-GS-40-0588), conspiracy, and possession of a firearm by a convicted violent felon (2015-GS-40-1643), and unlawful carrying a pistol (2015-GS-40-1641). Applicant was represented by Neal Michael Lourie (Counsel), Esquire. Assistant Solicitor Richard C.R. Cathcart prosecuted the case. On March 16, 2015, Applicant pleaded guilty as indicted to murder, kidnapping, and armed robbery before the Honorable DeAndrea G. Benjamin. The remaining charges were dismissed pursuant to the plea agreement. Judge Benjamin sentenced Applicant to a negotiated sentence of thirty years' imprisonment for each charge, to be served concurrently. He did not appeal his convictions or sentences.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to properly prepare Applicant for trial."
 - b. "Failure to properly investigate and prepare for trial leading to plea."
 - c. "Failure to properly advise Applicant on lesser-included offenses."

¹ The header on Applicant's post-conviction relief application denotes "Barnwell County," but this appears to be a scrivener's error as the application has been properly filed in Richland County.

- d. "Failure to include Applicant in negotiations and provide discovery."
- e. "Failure to advise Applicant of all information leading to an involuntary plea."

At the evidentiary hearing, counsel explained Applicant's last allegation is a claim Applicant's guilty plea was involuntarily entered because Counsel failed to properly advise Applicant regarding his outstanding pre-trial motions. Applicant proceeded with all five allegations as set forth in his application.

SUMMARY OF TESTIMONY

Applicant testified he was arrested in 2012, and he had a previous criminal record of five strong-armed robberies. Applicant testified he remained in jail for approximately three years before entering his guilty plea. Applicant further testified Counsel was appointed to his case, and they met four to five times during the course of Counsel's representation. Applicant averred Counsel asked for Applicant's version of the facts, and Applicant gave Counsel a list of issues Applicant wanted to investigate. Applicant testified he wanted Counsel to investigate the house where Applicant's co-defendant stayed because Applicant believed the neighbors were potential witnesses. Applicant also wanted Counsel to challenge the search warrant for Applicant's house, through which law enforcement recovered Applicant's cell phone. Applicant testified his defense was mere presence, and he was simply in the wrong place at the wrong time but did not commit the murder.

Applicant further testified he and Counsel prepared for trial for three years, but a few days before the trial was scheduled to start, Applicant was brought to the courthouse to speak with Counsel. According to Applicant, Counsel told him his male codefendant was implicating him

and he should plead guilty, but Applicant thought that had been the situation throughout the life of the case. Applicant testified he did not have evidence to review like a gun or DNA, but Counsel or co-counsel told Applicant "there wasn't much on [him]." Applicant testified he asked Counsel why he should plead guilty if the State did not have sufficient evidence for a conviction, but he had a relationship with Counsel and trusted Counsel's assessment when Counsel told Applicant he was not likely to succeed at trial. Applicant further stated he answered affirmatively to the plea judge's questions during the plea hearing because Counsel instructed him to say yes.

Applicant testified he did not believe Counsel was prepared for trial. Applicant stated he gave Counsel the name of at least one witness, the person who dropped Applicant off at the codefendant's home, but Applicant did not know if that person had been subpoenaed for trial. Applicant also testified he asked Counsel if Counsel had interviewed the neighbors, but Counsel told him he had not had time to do that. Applicant further explained he never denied being present during the murder, but he always told Counsel he did not participate in the crime. Applicant also testified he wanted Counsel to challenge the admission of the cell phone data showing he was in the vicinity of the crime because he felt the cell phone was obtained through an illegal search, but Applicant could not recall what Counsel told him when he asked Counsel about it a few weeks before trial.

Applicant also testified he was served with the State's notice of intent to seek life without parole (LWOP), and he agreed to plead guilty because the State withdrew the LWOP notice as part of the plea. Applicant testified he and Counsel discussed lesser-included offenses when they discussed the plea agreement, and Applicant asked about a reduction in his charge to accessory

after the fact. However, Applicant agreed the State never offered to let him plead to that charge. Applicant testified the State agreed to withdraw its LWOP notice because Applicant admitted his involvement in the crime and his presence at the crime scene. Applicant did not recall being asked whether he agreed with the State's version of the facts as presented at the plea hearing, but agreed he told the plea judge he was satisfied with his attorneys and wished to plead guilty. Applicant testified he signed a plea agreement affidavit but stated he did not read it.

Counsel testified he was appointed on this case, but he requested the appointment because he knew Applicant and Applicant's family, and they requested his help. Counsel testified he was appointed in January 2013 and represented Applicant until he entered the guilty plea in March 2015. Counsel testified he visited Applicant multiple times – approximately once a month for two years – and prepared a discovery notebook for Applicant. Counsel also testified he had two investigators working on the case.

Counsel explained he talked to Applicant about his version of the facts. According to Counsel, he initially felt there were some worrisome issues raised by the State's evidence but Applicant had a reasonable chance of success at trial. Specifically, Counsel testified, the victim's last phone call was to the female codefendant's phone, and the female codefendant implicated Applicant and the male codefendant from the beginning of the investigation. Counsel further testified, in the beginning, he and Applicant discussed that the State's main evidence against Applicant was the female codefendant, as the cell phone records put him within the vicinity of the crime scenes but were not definitive. Counsel testified he and Applicant discussed the fact that the male codefendant could "flip" on Applicant and decide to start cooperating with the State.

According to Counsel, Applicant and the codefendant both agreed not to cooperate initially, but Counsel began to suspect the codefendant had changed his mind when his attorney stopped returning Counsel's calls a few days before the trial was scheduled to begin.

Counsel testified the female codefendant's statement was the only evidence the State had against Applicant for a long time because the State was having trouble getting evidence and test results back from SLED. Counsel filed a motion to dismiss and a motion for a speedy trial based on this delay, but Judge Hood held a hearing on the motion and was satisfied with SLED's explanation for the delay. Counsel testified he never expected a judge to grant the motion to dismiss, but he was trying to move the case along. Counsel further testified he did not believe a hearing was ever held or a ruling received on a third pre-trial bond motion.

Counsel testified he and Applicant discussed whether, at trial, the defense should present its own case or simply attack the State's evidence; Counsel stated, however, Applicant did not have an alibi and later admitted he had been present at the crime scene but claimed he did not participate in the murder. Counsel testified the posture of the case changed drastically on March 15, 2015, when the State informed him the male codefendant had given a statement confessing his involvement and implicating Applicant. Counsel also testified the State had found witnesses who would have testified they saw the female codefendant cleaning up blood outside the house and heard the male codefendant referring to an African-American man with an Arabic name. Counsel also testified shoes recovered from Applicant's house were eventually matched to shoe prints found at the scene.

Counsel testified he met with Applicant to explain all these issues, and they discussed the "hand of one, hand of all" theory of accomplice liability. Counsel further testified he advised Applicant they would have to succeed on all the major charges at trial because, due to Applicant's previous criminal history, the State only needed one conviction to trigger LWOP. Counsel stated he reviewed the LWOP notice and investigated Applicant's criminal history, including the propriety of using a juvenile conviction as a strike, and Counsel concluded the notice was valid. According to Counsel, he advised Applicant of all of these issues, and Applicant chose to confess and plead guilty freely and voluntarily in exchange for the State withdrawing the LWOP notice. Counsel testified he reviewed the plea agreement and affidavit with Applicant, with Counsel reading each item and Applicant initialing next to each.² Counsel testified he always instructs his clients to tell the truth during the plea colloquy with the judge. Finally, Counsel stated he was prepared for trial, had Applicant elected that option.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State,

² The plea agreement affidavit was entered as an exhibit during the evidentiary hearing, and this Court has reviewed it and taken it into consideration in making its decision in this matter.

286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way, nor was Applicant prejudiced by Counsel's performance. Counsel met with Applicant and reviewed with him the elements of the crimes charged, possible penalties, the evidence and discovery in the case, and Applicant's version of the facts and potential defenses. This Court finds Applicant ultimately chose to cooperate with the State in order to avoid a likely sentence of life without parole, and this decision was made freely and voluntarily. Therefore, for the reasons stated below, the Court denies relief and dismisses the allegations with prejudice.

1. Failure to adequately prepare Applicant for trial, failure to investigate and prepare for trial

Applicant alleges Counsel was ineffective for failing to review discovery with him and prepare him for trial, and that Counsel did not properly investigate the case and prepare for trial. This Court disagrees and finds Counsel provided effective assistance in this case.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144

(2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

In addition, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). To establish counsel failed to adequately prepare for trial, Petitioner must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not

entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds credible Counsel's testimony he met with Applicant nearly every month for over two years, provided discovery, and discussed the posture of the case with Applicant as new developments arose. Counsel's file contains extensive and detailed notes supporting his testimony, which Counsel read into the record during the evidentiary hearing. Counsel also testified he had multiple investigators on this case and pushed for SLED to process and test evidence. This Court finds credible Counsel's assertion the case changed dramatically once the male codefendant began cooperating with the State shortly before trial was set to begin, and this changed the degree of risk Applicant faced in proceeding to trial. The Court also finds credible Counsel's testimony he was prepared for trial had Applicant decided not to cooperate with the State and confess.

Applicant admitted he knew there were potential witnesses and defenses he could raise at trial and at least one outstanding pre-trial motion when he decided to plead guilty. Additionally, although Applicant alleges Counsel did not adequately prepare for trial, Applicant presented no evidence of any issue Counsel missed in his preparation of the case or any meritorious defense Applicant was unable to raise due to Counsel's allegedly deficient preparation.

Therefore, applying the above-recited case law to the facts of Applicant's case, for the reasons recited above, this Court finds Counsel not deficient in his investigation of the case and preparation for trial. Additionally, this Court finds Applicant failed to prove he was prejudiced by Counsel's allegedly deficient conduct. Accordingly, these allegations are denied and dismissed with prejudice.

2. Failure to properly explain lesser-included offenses, failure to include Applicant in negotiations, failure to provide Applicant all necessary information prior to guilty plea

Applicant alleges Counsel failed to properly explain lesser-included offense, failed to include Applicant in plea negotiations with the State, and failed to provide Applicant all necessary information prior to Applicant's guilty plea. This Court disagrees. This Court finds credible Counsel's testimony he reviewed the State's evidence, the potential strengths and weaknesses of each side's case, and the possible penalties with Applicant prior to the plea. Further, this Court finds the plea affidavit and plea colloquy are dispositive as to these issues, and the record clearly establishes Applicant pleaded guilty freely and voluntarily.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985).

The plea transcript reflects the plea judge clearly explained the terms of the negotiated agreement to Applicant, including the thirty-year sentence and withdrawal of the State's LWOP

notice, and Applicant indicated his understanding of the agreement. Tr. pp. 3-4, 6. The plea judge also explained to Applicant his right to a jury trial, the State's burden of proof, and Applicant's right to challenge the admission of any statements and other evidence; Applicant informed the plea court he understood these rights and wished to waive them to plead guilty. Tr. pp. 13-14. Importantly, Applicant also affirmed he had enough time to talk with Counsel to prepare his case and he felt Counsel had done everything he asked or felt Counsel should have done. Tr. pp. 14-15. Finally, the plea court specifically inquired whether Applicant understood the court's questions and had given his own answers, and Applicant stated he did and his answers were his own. Tr. p. 16. Accordingly, this Court finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel's representation. Counsel met with Applicant on multiple occasions to review discovery, discuss the facts of the case, and explain Applicant's constitutional rights and options for resolving the case. Further, the plea transcript reflects Applicant entered into the guilty plea freely and voluntarily. Therefore, this Court denies relief and dismisses these allegations with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v.

State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

Kristi Curtis

KRISTI F. CURTIS
Presiding Circuit Court Judge
Fifth Judicial Circuit

May 17, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL DISTRICT
COUNTY OF RICHLAND	)	
Yusuf Karim Aquil, #226843	)	2016-CP-40-1661
Applicant,	)	
	)	
v.	)	MOTION TO RECONSIDER
	)	
State of South Carolina,	)	
<u>Respondent.</u>	)	

NOW COMES, Applicant, Yusuf Karim Aquil, by and through his undersigned counsel and moves pursuant to Rule 59(e) SCRCF for an order altering or amending the court's prior order filed on May 22, 2019, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000). Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Failure to properly prepare Applicant for trial;
2. Failure to properly investigate and prepare for trial leading to plea;
3. Failure to properly advise Applicant on lesser-included offenses;
4. Failure to include Applicant in negotiations and provide discovery; and
5. Failure to advise Applicant of all information leading to an involuntary plea.

THEREFORE, counsel requests that Order be reconsidered for the above listed specific

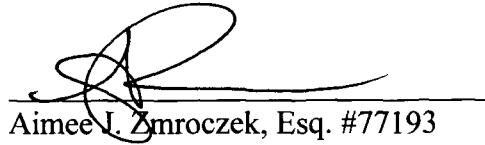
LEANETTE B. MCBRIDE
C.C.P., G.S., & E.C.

2019 JUN -3 PM 2:25

RICHLAND COUNTY
FILED

reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Aimee J. Zmroczek', written over a horizontal line.

Aimee J. Zmroczek, Esq. #77193

A. J. Z. Law Firm, LLC

2003 Lincoln Street

P.O. Box 11961

Columbia, SC 29211

(803) 400-1918 telephone

(803) 403-8005 fax

aimee@ajzlawfirm.com

Counsel for Applicant

Columbia, South Carolina

Dated: June 3, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
))
Yusuf Karim Aquil, #226843) 2016-CP-40-1661
Applicant,))
))
- vs -) CERTIFICATE OF SERVICE
))
State of South Carolina,)
Respondent.)

I certify that, on this date, I served a copy of the Motion to Reconsider dated June 3, 2019 by depositing it in the U.S. Mail in an envelope with sufficient postage affixed, addressed as follows:

Lindsey A. McCallister
Assistant Attorney General
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

JEANETTE W. MCBRIDE
C.C.B., G.S., & F.C.

2019 JUN -3 PM 2:26

RICHLAND COUNTY
FILED

Christina A. Metze
Christina A. Metze

Columbia, South Carolina

Dated: 6/3/19

IN THE STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND | IN THE FIFTH JUDICIAL CIRCUIT

Yusuf Karim Aquil, #226843,

CASE NO. 2016-CP-40-1661

Applicant,

v.

State of South Carolina,

Respondent.

ORDER DENYING APPLICANT'S
 MOTION TO RECONSIDER

RECEIVED

DEC 27 2019

S.C. SUPREME COURT

2019 DEC -5 AM 11:31
 RICHLAND COUNTY
 FILED
 C. J. S. & F.C.

On June 3, 2019, Applicant submitted a Motion to Reconsider the Court's Order of Dismissal dated May 22, 2019. Applicant's Motion sought relief on the following allegations which were previously raised in Applicant's memoranda:

1. Applicant alleges that Counsel failed to adequately prepare Applicant for trial;
2. Applicant alleges that Counsel failed to properly investigate and prepare for trial and claims that this failure contributed to Applicant's guilty plea;
3. Applicant alleges that Counsel failed to properly explain lesser-included offenses;
4. Applicant alleges that Counsel failed to include Applicant in plea negotiations with the state and provide Applicant with discovery; and
5. Applicant alleges that Counsel failed to provide Applicant with all of the necessary information which resulted in an involuntary plea.

Upon reviewing the arguments raised within Applicant's Motion, the Court's Order of Dismissal, and the submissions of both parties in this matter, this Court does not find that there is proper cause to reconsider the Court's original order.

IT IS THEREFORE ORDERED THAT:

Applicant's Motion to Reconsider the Court's Order of Dismissal is denied.

AND IT IS SO ORDERED this 26th day of November, 2019.



KRISTI F. CURTIS
Presiding Judge
Fifth Judicial Circuit

WITNESSES

(S) WH MONTGOMERY – Columbia Police
Department

ARREST WARRANT NUMBER

2012A4021601011

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: JAN 17 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS400 00591

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

67

THE STATE
vs.

Yusuf Karim Aquil

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JANUARY 16, 2013,
 the Grand Jurors of Richland County present upon their oath:

MURDER

That Yusuf Karim Aquil did in Richland County, on or about September 17, 2012, willfully, feloniously, and intentionally kill the victim, Marion Jones Spencer, with malice aforethought, either express or implied, by means of Blunt force injuries to head and asphyxiation, and the victim did die as a proximate result thereof on or about September 17, 2012 in Richland County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) WH MONTGOMERY – Columbia Police
Department

ARREST WARRANT NUMBER

2012A4021601012

ACTION OF GRAND JURY

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS400 00 587

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

67

**THE STATE
vs.**

Yusuf Karim Aquil

**Indictment for
KIDNAPPING**

SC Code: 16-03-0910
CDR Code: 0095

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on January 16, 2013, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Yusuf Karim Aquil did in Richland County on or about September 17,
2012, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry
away one MARION JONES SPENCER, without authority of law, in
violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) W.H. MONTGOMERY – Columbia
Police Department

ARREST WARRANT NUMBER

2012A4021601013

ACTION OF GRAND JURY

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS400 00588

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

67

THE STATE
vs.

Yusuf Karim Aquil

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,**
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

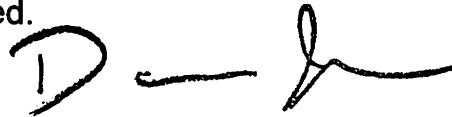
INDICTMENT

At a Court of General Sessions, convened on January 16, 2013, the
 Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Yusuf Karim Aquil did in Richland County on or about September 17, 2012, commit robbery by feloniously taking from the person or presence of MARION JONES SPENCER, by means of force or intimidation, goods or monies of MARION JONES SPENCER, such goods or monies being described as U.S. Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

Yusuf Karim Aquil

AKA:

Race: BLACK Sex: M Age: 36

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Colony Drive

City, State, Zip: Columbia, SC 29223

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4000591

A/W#: 2012A4021601011

Date of Offense: 9/17/2012

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 66185 SC Bar# [Signature] 39415 Defendant [Signature] 7102 Attorney for Defendant [Signature] 73595 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 906 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JANUETTE MCBRIDE
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Yusuf Karim Aquil

AKA: _____

Race: BLACK Sex: M Age: 36DOB: SS#: Address: Colony DriveCity, State, Zip: Columbia, SC 29223DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnappingin violation of § 16-03-0910of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

CATHCART, RICHARDSC Bar# 6685Defendant Yusuf Karim AquilAttorney for Defendant W. W. MooreSC Bar# 7102

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center, SCBAC # 73595
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 906 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

IN THE COURT OF GENERAL SESSIONS

133

INDICTMENT/CASE#: 2013GS4000587A/W#: 2012A4021601012Date of Offense: 9/17/2012S.C. Code § : 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSAppointed PD or appointed other counsel, § 47-12 requires \$500 be paid to Clerk during probation.Other: no sex offender registryClerk of Court/ Deputy Clerk Court Reporter:

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2161Sentence Date: 3-16-15

CERTIFIED TRUE COPY
OF ORIGINAL FILED
J. J. R. & G. S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

Yusuf Karim Aquil

AKA:

Race: BLACK Sex: M Age: 36

DOB: SS#:

Address: Colony Drive

City, State, Zip: Columbia, SC 29223

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

CATHCART, RICHARD

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 90 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4000588 ✓

A/W#: 2012A4021601013

Date of Offense: 9/17/2012

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeanette McSide
C.C.P. #
RICHLAND COUNTY
SOUTH CAROLINA

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

2161
3-16-15